THE
Bounds and Bonds
OF
Publique Obedience,
OR
A Vindication of our lawfull submission to the present Government, or to a government supposed unlawfull, but commanding lawfull things.

Likewise how such an obedience is consistent with our Solemne League and Covenant.

In all which a Reply is made to the three Answers of the two Demurrers, and to the Author of the grounded Case of Conscience, who professe themselves compassionate Presbyterians.

The Second Edition, Corrected and amended.

London Printed for *John Wright*, at the Kings-head in the Old-Bailey. 1650.

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Whence the difficulty of perswading civill truth.

I Know not by what fate or misfortune it comes to passe, that in the disquisition of a truth (though a simple uniforme thing) yet the contests about it are usually infinite, and it is as difficult a thing to disincumber it from errours, as it is a good field from weeds and brambles; which when the country-man hath burnt to ashes, and thinks he hath quite destroyed, the next yeare to his astonishment he sees them return more numerous then before. Surely our unhappinesse in the Eradication of civill errour is, that we speake more to the affections then to the judgements, and therefore offer passion in stead of reason, or make one but the counterfeit of the other, or else not affecting one

one anothers perſons, we fling headily into oppoſite paths or principles, in which not treading together at firſt, we cannot poſſibly meete together at laſt, and in this aberration we loſe both truth and our ſelves.

Thus we finde it in theſe three ſeverall anſwers to the firſt Treatiſe, in which (and the unhappilier, to give foundation to practicable errours) they at the very entry of the controverſie miſtake principles, in jure publico, in the originall of Magiſtracy and Government, in the nature of poſſeſſion, preſcription, right of extreme neceſſity, of aſſertory and promiſſory Oaths, &c. *I ſhould not ſo diſcretly tell theſe tripertite Anſwerers, that they doe* ſupponere quodlibet, ut Probetur quidlibet, *were it not but that I ſee them ſo Magiſterially peremptory to preſcribe to others, and to neceſſitate us into actions of the greateſt prejudice that may be betwixt man and man, that I find one of them give ſuch a looſe to his paſſion, that it carryes him into direct Blaſphemy,* adviſing that a Committee might treat with God, yea ſentence the bleſſed Trinitie. *Laſtly, becauſe all the world knowes they give that obedience (which to attaine publique deſolation) they will not allow to others; Wherefore as the ſubtilties of the vapours are ſo fine and delicate, that they paſſe upwards on every hand about us impercriptibly till at laſt we heare them over our heads formed into Thunder, Lightning and Tempeſts; even ſo the fumes of theſe private mens* Paſſions *paſſe ſo ſubtily through their ſoft words, that if we who converſe with them be not maturely adviſ'd of them, their inſinuations will draw us into fire and flames, into blood and deſolation, into the calamities of a war, which perhaps may end as diſtantly from our & their new Covenant intentions as the two former have already done.*

First Demur. p. 5.

Demur. p. 6. caſe of Con. p. 7.

The Queſtion which was firſt aſſerted ſtands ſtill unſhaken and almoſt untoucht, amd in all theſe anſwers it is evidently granted, That we of the people may lawfully give obedience to an unlawfull power; this onely is denied, That it may not be with an acknowledgement of their authority and right.

Pag. 2.

The firſt argument of the firſt Demurrer is formed againſt

gainst the incapacity of the persons governing, and runs thus:

Ob. *That which is now termed a Parliament, is neither formally, materially, nor effectually a Parliament, such as it requisite for this Kingdome, either according to the mind of God, or the necessities of the State. First because the change which is made in it, is not made by those who first constituted it, unlesse it be by conquest. The modern modell containes not the whole, nor the major part of the people. Secondly, the alteration is made by the commons onely, the Nobility as* illustrior pars populi *appeared not in it.*

Ans. Though this Argument (with the rest) relates more to the Commanders then to the obeyers, (of whom our controversie onely is) and that we of the People have a right to doe lawfull things, though there were no Magistrate lawfull or unlawfull to oversee us, yet I shall not stop at these advantages, but oppose to the main of this Argument, the main of our Creation and conservation. For we have nothing else to doe in the world, but to praise God and love our neighbour. The circumstence of the Magistrate is onely to be an encouragement of this, and to see that it be done with security: and if he doe this (what ever he be) we are beholding to him, & should praise God for him, and then why not obey him?

The end of Magistracy, subservient to the end of our being.

Though this were granted, That one Magistrate was unjustly ejected by another, and one government by another, yet that relates onely to those who co-operated in it whilst it was doing. How can such a supposed guilt in them, be in any part continued upon, and ascribed to us of the low rank of the people? or now especially that we come into it after it is done, and after we are under the full possession of a present Power? People by the effects of it, sustain punishment enough if they doe indeed lose a good Magistracy, must they likewise be punisht because it is lost, though they were no con-cause of it?

The Author of the Grand Case of Conscience, p. 10. infers *Yet*, and therefore makes our new commotions necessary: *because we can doe nothing just in a State, where*

(through the defect of a legal Magistracy) we can have no justice, yea though the things we do be in themselves just. For (quoth he) judgement is then onely just, when it is exercised by the higher Powers, the legall Magistracy of that Kingdome, where it is acted.

All justice or just things relate not essentially to the legal Magistrat

I answer, things are considerable, onely so far as they may reach the ends for which they are. The end of every Magistrate is to see justice executed in case it be violated: *Justo enim non ponitur lex.* The end of justice is to be a measure of *equity*, that is, of *equality*. Justice or the proportion of equality is either Commutative or distributive. But neither of these relate so essentially to the legall Magistrate, that nothing can be done truly and conscienciously just, without he co-operate in it. As for *Commutative equality*, if *Titius* lend *Sempronius* ten bushels of such a quantity, which bushels have the publike mark upon them, and *Sempronius* pay him ten other every way of the same equality, but that there wants the former mark, or that the said bushels have another marke, will you say *Sempronius* hath not intrinsically done *Titius* justice, or hath not justly satisfied him in his quantity? especially if in the mean time no more of that former marke can be had? As for *distributive justice*, we know that St. *Paul* advised the *Corinthians* to avoyd the legall Magistracy and the judgement of the higher Powers of that Countrey, and rather to end things by arbitrement among themselves, which had been an advice unjust and to the scandall of Christianity, if things in themselves just might not be done but by the justice of the legall Magistrate. This therefore is but according to an old Axiome of justice, *Provisio hominis tollit provisionem legis.*

Of commutative justice.

1 Cor 6. of distributive justice.

This present Parliament is effectually a Parliament.

Thus much I have thought fit to answer in generall to this objection; but now more particularly I answer to its terms. And first, why is not this effectually a Parliament, seeing it is the Supreme present power of the whole Nation, no part excluded? which in this controversie is the very term of the question. I hope he means no Criticisme by the word Parliament; if he doth, it signifies

fies onely a publike speaking or consulting together for the publike. Moreover, the Author would be (I am sure) much perplext, if I should aske him, *how he knoweth so indubitably that this is not a Parliament or supreme power requisite for this Kingdome, according to the mind of God?* He must pardon us, if we think forms no more than persons are to last here alwaies; or that the changes which have been, and still are to be of both, must never be done but according to the customary formalities of a quiet people, but rather according to the extreme necessity of a State. For if he ask me, what it is that forms in-organiz'd people into a government, of what sort soever? I ans. Necessity. If, what makes or takes away a Law in a Government established; I answer, Necessity. If, what takes away a Government it self? I answer, according to himselfe, *page* 2. that which first gave it being, *viz.* Necessity. Of which there are severall degrees; for in a peaceable State a word may take away that which in a disturb'd State must be taken away by the Sword: after which it is but equall that he who gives the last blow, should in that quarrell give the last word, and leave us to a peremptory obedience, unlesse we would have no quarter in the world, or be like the old *servi in bello*, who were sold, confind to chains all their lives, or condemnd to dig perpetually in Mynes; All which it seems this Authour would have the conclusion of this argument, or else we are more beholden to the charity of enemies, than to him. If we will not be perswaded by the States arguments, yet let us hear what *Grotius*, among others, determined long agoe, for all the world in this case. *If a King have but a part of a supreme power (which consists in making and taking away Lawes, in laying universall Taxes) and the People or Senate have the other, the King may be forcibly opposed if he invade that part which is not his, because for so much he hath no right nor power. This is to hold, although such a King have the Militia alone; for that (in his hand) relates only to forraigne war, it being uncontrouled how they who share in supreme Rights, can be exempt from a*

Necessity above forms of Government.

right

right of defending them. When war shall happen betwixt such Fundamentall and Supreme parties, the King may lose all his share by right of War. Lib. 1. c. 4. sec. 13. de Jubel. & pa. 1

The difference betwixt conquest and victory.

Which right of War betwixt those who divide a whole Kingdome, if it end clearly to the Reduction of one party, is not called so properly conquest as victory. This Authour uses the name of the first onely for the hatred every one bears to it, because it swallows the rights and persons of the whole; Whereas victory relates onely to a part of either, as beginning and ending in Civil wars, where disputes of Right arise betwixt those of the same Jurisdiction & Country, & of the same Common Law.

But we have Arguments more Authentique then these, to shew *that such changes may be according to the mind of God*: and the Demurrer all his life will never prove the contrary. *Dan. 4. 31, 32. Gods power is an everlasting power, and his Kingdom is from generation to generation;* All the inhabitants of the earth are reputed as nothing, and according to his will he worketh in the Army of Heaven, and in the inhabitants of the earth, and none can stay his hand, nor say unto him, What dost thou? That is, God as Universall Lord, and King of Kings, governs both Angels, men, and Devils, and all must submit to him because of his supreme *irresistibilitie*, Psal. 75. 7. *God is the Judge, he maketh low, and he maketh high.* It must be confest that by him Princes reigne; but our Author had rather perpetually imbroile our bodies and souls, then clearly say, by *whom it is that Princes cease to reigne.* For then this Controversie would easily be reconcil'd, and wee as easily one to another.

Object. *We have shown how the reason of Constituting, and of chaning Governments, is still one and the same, viz. Supreme Necessity; But the Demurrer objects that our change hath not been done by the same order of persons, who were in the old, viz. By major part of Lords and major part of the Commons.*

Answer. Although he is again besides the state of the Question, shewing onely how they who are the Supreme Power of the Land, ought not to command us, rather then that we

may

may not obey them in lawfull things; yet I shall here make another sort of reply, which will be very short to those who professe themselves *Presbyterians*, that is, originally *Parliamentarians*.

The State of Kingdoms as separated, and as mixt in themselves

Kingdoms which are Supreme in themselves, and communicate not in one anothers Lawes, are all of them *Jure Gentium*, in a state of war, unlesse they be mutually bound by Leagues to the contrary; which Leagues, if they come to be broken, usually have the conditiõs of Invasion annexed, and the time and places nominated for beginning it; and because there is nothing any longer due by Law, or League from the party injured, where now the sword is onely to end the controversie, therefore what ever shall be acquired in this state of things from the party injuring, rightly changes all Titles *in Jure publico*, and in the right of governing what is acquired; but in one and the same Kingdome, where the Supremacie of Power and Right lies divided (as *Grotius page* 7. states it) there, if they differ fundamentally, denying one anothers Rights and Powers, they are then immediately in the same state of war with those other separate Kingdoms; here onely is the difference, that these in their Concurrence and Constitution, making but one, have none of those ordinary Cautions as Leagues have for their Right of invading one another by the way of War: a circumstance no more necessary betwixt them, then that in the marriage of two persons, a Lawyer should come after the Minister hath conjoyn'd them, and tell them in what cases they may again proceed to Divorce, and after their Divorce what kinde of marriages they should make next. Even so War is suppos'd in that case, as well as Divorce in this; But because War begins there where Law ends, and reciprocally, and hath nothing but necessity for its equity and that all the degrees of necessity cannot at first be foreseen, nor where security may at the end of all be presum'd of, therefore there neither is, nor ever was any fixt rule in any Country, what people should be bound to do at the end of a War. I hope the *Presbyterians* neither

Of the right of War betwixt Fundamentall Parties.

of *England* nor *Scotland* intend to deny what all the world knowes, that they concluded the King under the necessity of War, as well as others who conjoyned with them; and having stated his case there, they of the Kirke long agoe frankly declared, that he not satisfying for the bloud of three Kingdomes, was not to touch the Scepter any more, but as Mr. Hinderson *applyed in his* Newcastle *Conference, the 4th. of* Hester 14. *That if his Majesty reformed not according to their way, he and no lesse then his Fathers House were to perish: by which, what could he and they understand lesse, then change of Government?* a thing why now in their sense so horrid for the other party to think on, seeing they gave first intimation of it? They joyntly declared, that the King was not to judge any thing for himselfe, nor upon what tearms his readmittance to simple liberty could stand with their security; for, his War when it ended (as they said who imprisoned him) continued the same necessity upon them, which made them take Armes at the beginning. Therefore they themselves concluded, that nothing could be changed in the Kings concernment, according to the old form and constitution of the Kingdom, which relates to a time of Peace, and not to a time of War.

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But the Nobility, whom he here stiles, illustrior pars populi, *concurred not to this change; therefore it is formally and fundamentally unlawfull.*

Of the House of Lords.

In the first place, I understand not, and I beleeve the Lords doe as little, what he means by putting them into such improper Latine. For they alwayes understand themselves to be rather of the two, *Comites Regis*, then *partem populi*; and therefore, as if they were an integrant part of the Kingdome, form'd to themselves a separated House, a Jurisdiction over the people, and lay as a Bar betwixt the King and them: whether that power of theirs had any congruity with the other supreme and Legislative rights of the people, or no, is not now the question, but rather this, *Whether by their falling off from their mutuall engagements, their rights of a separated House were rightly lost to the House of Commons, or no?*

This

This is by them affirmed, and the State of *Venice* as profound Platonists, deny the other; for otherwise Noblemen would be as difficultly reformed as Kings, and therefore they rarely conferre illustrious Titles of Nobility on any but those who are in illustrious Offices, things separable from persons, by which meanes all Officers with them are questionable: but to return, that which according to themselves thus excludeth the King, by the same Logick excluded the Lords; and if they either directly or indirectly concurred to the ruine of the rest of the Kingdome, then the argument runs strong, that the House of Commons were bound to preserve it, and that the rest rightly owe their whole protection under God to them. But because I will suppose nothing here, the argument of mattter of fact must judge one as well as the other.

Wherefore if any will aske, whether there was not a Warre undertaken last year very eminently dangerous to the whole Parliament and their Party, the Army, and Country Committees, and that by the contrivance of the Royall Party here, the Scots *Nation in the North,* Ormond *in* Ireland, *it will be past denying. Likewise, whether the House of Lords in that extremity declared with the Commons, that the* Scots *were Enemies to the Kingdome, or upon the first or second request gave their Concurrence for Counties to arme themselves for their defence?* The voyce of all parties must needs say no: So that, that House undertook to act a part as dangerous to the rest of the Parliament, as they did, who were actually in Armes against their party every where. And how then should they expect to be still necessary to them, and to their securities, who had put them into such apparent extremity and necessities? As for the exclusion of some Members of the House of Commons, I hope the sincere Presbyterians wonder not at that act, because the Kirk and State of Scotland was preserved by such an act last yeare, and by the concurrence of the same meanes which did this here. Yea, though they who from thence invaded our Nation, declared as much for the Covenant and Presbytery as the Kirk it selfe, save

Of Secluded Members.

onely that the Kirke had the good luck to ſpeake the laſt word.

They who ſit at top in the State are *tanquam in nubibus*, to the eyes of us of the people. We know not how they manage their Counſels, nor contrive their tranſactions; that is beſt determined by and amongſt themſelves. It is enough for us if they be of a number competent to act, and be perſons who enter by vertue of free Election, and ſit in the legall place. For in a caſe where five are choſen to a buſineſſe, and that any three of them are to be of the *Quorum*, though two of them be never ſo accidentally or violently detained, yet what the other three do, is to all intents and purpoſes valid, which is the preſent caſe. By this Gentlemans favour, we have an Axiome of Law, which ſaith that in Partner-ſhip or Society (as the Civill Law cals it) when matter of *extreme prejudice* is agitated betwixt thoſe who are of equall contribution either of Art or Mony, then *Potior eſt conditio negantis*: nothing ought in this caſe to be concluded againſt the negatives, though fewer in number, which was the Parliaments caſe, when after the equall provocations of a Prince by Warre and Impriſonment, ſome of the ſame Houſe thought he might have beene ſecurely re-admitted into the Government againe, and others thought it evidently dangerous. In this caſe, the difference was as it were legall betwix the Members, but not to be decided any way but by force, there being no other Tribunall to judge them; and their Houſe might not judge of it, becauſe there they were parties and Judges, a thing allowed no where; and if otherwiſe, then the *major* part might legally Vote the other out of the Houſe at pleaſure. But what was at laſt determined by any number above fortie with the Speaker in the Legall place, ſeemes not out of forme to us of the people; which was the caſe of the Houſe of Lords, when moſt of them, and many of the Commons, at the beginning of the firſt Warre, fled to the King (under pretence of force) from *Weſtminſter*. Yea, when the five Members were forc't from

The Negative, when prevalent in equall partnerſhip.

Whether the tranſactions of the Legall number of the Houſe be invalid, when any Members are forc't away?

ſitting

ſitting, yet the reſt of the Houſe ſat and acted without them, and Voted a Committee, *Jan* 5. to ſit in *London* and there to take into conſideration the breach of Priviledges, the ſafetie of the King and Kingdome, and preſervation of *Ireland*; which was accordingly done by vertue of thoſe Votes, made when Members were thus forc't away. All our ſcruples therefore are concerning things to us practicably lawfull or unlawfull in themſelves.

As for *the will of the Major part of the people*, how will the Demurrer prove, that they had not rather obey this preſent Power, then ſeeke to be rid of it by the hazards and calamities of another Warre? They uſually look after nothing but their Rents, Markets, and reaſonable ſubſiſtances; they are the luxurious and ambitious part onely which pretends to new troubles. The peoples queſtion thereof is not *how* the change was made, but *an ſit*, whether it be ſo changed, or no? For, if according to its formalitie, that be not rightly done, it concerneth not their conſciences no more then the Thunder or Lightning over their heads doth, which are things totally out of their power, much leſſe may they lawfully deſolate Neighbours for them. Of the preſent conſent of the major part of the people.

But he hath found one firme Axiome, *That when part of any thing is cut off, the whole* qua tale *is deſtroyed* quia dum ceſſat forma, ceſſat formatum; ergo *the late force on the Parliament hath made this no Parliament*. Object.

I wiſh he had taken the paines to give either a diſtinction or an inſtance in his Axiome, or have drawne up his inference into a Syllogiſme; for I feare we ſhall finde wide impertinence in the firſt, and a groſſe *non ſequitur* in the laſt, as he hath ordered it. The queſtion diſputed here is not, *Whether the denominated Parliament now ſitting at Weſtminſter be a Parliament, according to the old forme and compoſure of Parliament, or no; but whether the Parliament now ſitting at Weſtminſter, be the ſupreme Power of the Kingdome, or no, and to be obeyed in lawfull things?* His Argument runs thus: Anſwer.

The supreme Power of the Kingdome consists in a Parliament of King, Lords, and Commons.

But at Westminster there is not a Parliament consisting of King, Lords, and Commons.

Ergo, *at Westminster there is no true Parliament at all; nam dum cessat forma, cessat formatum.*

I thought he had beene so good a Logician, as to have understood, that the conclusion of his Syllogisme ought to have beene contradictorie to the question; from which it is as distant, as if he would have concluded, that two and three make five, which is very true; but how is it any thing to the purpose?

Whether the present Power be the Supreme?

However, I will doe him the favour to denie his *Major*: For we speake of Powers which *now* are, and he himself hath all along condoled the ejection of the King, and of House of Lords, as things which are not: *Sed non entium nulla sunt affectiones*; and so consequently, they who are now nothing, make nothing now at *Westminster*, or any where else. But doth it follow however, that there cannot be now any supreme Power at *Westminster* at all? If he had proved this, he had proved something. But perhaps the very word *Parliament* poses him, or else he would thereby impose on others. I must confesse, words are dangerous, when they are not fully explained: and possibly, the King mistooke himselfe very much upon the very Alphabet and word of his Title, supposing he could not be named *King*, unlesse he were absolute, as he observed other Kings were; whereas by our constitution he was but one of three, who concurred to the making and abrogating a Law, and it belong'd to the Commons alone to lay an universall Tax: so that he was in most things rather Prince by Office, then King by Power, *in tanto non in toto*. Even so the word *Parliament*, as it hath beene popularly understood, signifies the Assembly of severall Houses, deliberating and concluding what was judged for the good of the publique.

Whether it be a Parliament?

But is it a contradiction to say, a Parliament cannot at all be truly so called, unlesse so understood? We know there

there are eight Parliaments in *France*, which are not of such a constitution, though of the same Denomination. And if severall persons plenipotentiarily deputed to conclude for the publike good of the people, sit now at *Westminster*, and that the other concurrent powers be civilly dead; why may not we congruously enough still call them a Parliament? *His* axiome therefore serves onely against himselfe, and the true English of *dum cessat forma cessat formatum*, is this, That seeing the old form of this State, as it was in the supremacy of King, Lords and Commons, hath in that relation ceased to be, and is civilly dead, not being able any longer to act any thing; and that a civill body, as well a naturall, cannot live without a head one day: it followes then by this position, that the Regall Government is gone, and that we are in the state of a Republike; no other power now informing or actuating us, besides that which pretends to such a State; and where I pray you is that to be found now, but at *Westminster*?

In the next place he offers a case: If the King, when he came to accuse the five Members, had detained all but forty and the Speaker; and had forc't them to Vote, that the whole Legislative power resided in himselfe; would we have deemed this a valid Vote? Especially seeing some Votes since this Session were adjudged Null, because the House was under a force. By which it seemes (quoth he) that with some now veritas non est perpetua; *and* Duo dum faciunt idem, non est idem. *Object.*

To the first I answer positively, that such a Vote attained by the King, had been no wayes duely valid. *Answer.*

But what is this to the purpose? For the question should have been *after the King had attained such a Vote, & had got us all into his full possession, whether we of the people might have obey'd him ever after in lawfull things?* The case of the Kings comming to the House of Commons not paralell.

Secondly, if he would have the people understand this case to be paralell, to the late exclusion of the Members, he prevaricates grosly againe: For he supposes, the very forty *in the House*, with the King, to have been under a force;

force; whereas in the Parliaments case, none but those *who were out of the House*, were under restraint; the former were supposed to be forc't to a particular Vote, the latter were kept from Voting at all: Besides they who *de facto* Voted in the House, have publikely declared that they past their Votes, with all wonted freedome, & were rescued as it were from an overawing power, which concludes against his Argument abundantly. As in this Argument he hath done truth little service; so he hath (by his mistake) done Kingly Government lesse. For if Princes who have us in their full possession, may be obey'd in no lawfull things, after they acquire an addition of some other powers unlawfull; then he would dissolve most of their Governments, and have absolv'd us from Allegiance to King *Charles* long before this Parliament began; by which sort of arguing the Royallists I see will have no great prize of this Gentleman.

But the Parliament hath already declared the Votes made under a force are null; This Vote I suppose he meanes past after the boys and apprentices of the Town had entred the House, and made the Speaker propound, and the Members Vote what they pleas'd. Here indeed there were forced Votes; But surely this proves not, that they who Voted, when the Members were last excluded, Voted in that manner. Besides the Parliament which knowes better then we of the People, what their own disorders within their House are, are onely fit to Vote, what Votes have been forc't upon them, and they since that time have declared, they never transacted things with greater freedome and lesse over-awing. From whence I easily see that his axioms will serve him nothing at all. For we acknowledge *Veritatem esse perpetuam* if we speake of naturall and Mathematicall truths, where there is no *medium proportionis*, to varie the thing; as all number are even or odd; because there is no middle number, so all lines are either crooked or straight: But morall and civill things are alwaies in change, because humane actions are invested with such an infinity of circumstances and accidents; for which

The case of the Apprentices entering and forcing the House not paralell.

The Parl. votes against force, still observed & are the same still.

which reason *Duo dum faciunt idem non eſt idem*; For no two men in the world can act the ſame thing in all the ſame circumſtances: Thus we heare that *Omnis definitio in jure eſt periculoſa*; and *ſummum jus aliquando ſit ſumma injuria*, which cannot be but in regard of thoſe various accidents which perplex our actions, and make them like that famous flower the Marvell of *Peru*, which changes the colour of its Leaves every day. His laſt axiome, *That no man ought to take advantage of his owne wrongfull act or of anothers*: is impertinent and no way belonging to us of the people. If he intends it to the preſent Governours, he had beſt to take heed again, that he determine not againſt ſeverall lines of our Kings: For the clearing of whoſe titles after uſurpation, the Judges were ancienty ſore put to it, to make this one Axiome for all. That the impoſition of the Crown takes away all defects, and ſtops in bloud And if this be true, then we and our forefathers for the moſt part, have liv'd under no better Titles then *Plenary poſſeſſion*, to which they ſubmitted, either becauſe they knew no better Titles, or could have none of better to command them, or becauſe they were reſolved they might lawfully ſubmit in lawfull things, which therefore as it now ſeemes, is not ſo much our preſent queſtion as our preſent paſſion.

Why actions of Government muſt change.

How wrong hath been fitted for a title

Bac. H. 7.

Two principall inconveniences he findes in this preſent Government, and by the goodneſſe of the fruit he hopes he may judge of the Tree: where I muſt againe admoniſh him, that the civill fruit of a Government is alike in all Governments, eſpecially as to the *Meum* and *Tuum* of a people beſides, if the tree and the fruits here were alike, then a good Axiome were ſpoil'd; *Malus homo poteſt eſſe bonus civis, & bonus Magiſtratus*, A man bad to himſelfe, may be a good Magiſtrate and a good Common-wealths man. this firſt inconvenience is,

Ob:

That we have now made the baſis of the State, a quick-ſand; and it ſtands like Nebuchadnezzars *Image, upon a mixt footing, part iron, part clay.*

I anſwer, that it ſtands not now on ſo mixt a footing as before; For the concurrence of King, Lords, and Commons, for the product of a Supreme act, was a mixture of things

very heterogenious, to enter into one and the same composition: By reason whereof, supremacy confin'd as it were on a Battable ground; and if we will believe *Persidens*, Kings sometimes gain'd upon the other two, sometimes the Lords topt both, and now all is more united then ever in the sole suffrage of the people.

Ob. *Toleration is the next inconvenience, it being but equitable, That if we think it lawfull to force people to submit to the Orders of the State, the same people be compel'd to adhere to an established confession of faith in Religion. For it is presum'd that Obedience is fully as due to God as to man.*

Of toleration. I answer, the Christian Religion is not tolerated amongst us, it is injoyn'd, as much as one man can passe it upon another; For the finall penalty of neglecting it here is not to be required of us mutually in this life.

Secondly, The confessions of faith, which he would have men forc't too, are (as I conceive he meanes) but logicall deductions out of Scripture, Ergo not indubitably, true enough to be by force obtruded on mens faiths; *It is not enough to say here, that they who compile them, verily believe them true, and intend not to deceive*, which is all that can be said, For then they doe no more but quote themselves, and we are taught that it is a Popish opinion to beleeve any company of men are infallible, in what they propose: wherefore the Magistrate doe no more safely, then recommend, not force, their notions and Logick on the people. But in a case of *meum* and *tuum*, or in a morall thing he may be more peremptory then in a Divine, because those things are certainlyer known to us as men, then what is of divine revelation and inference.

Ob. *He feares that by an obedience to an unlawfull power, he may assert its unlawfulnesse; and should our servants rise against us, and command us by threats to performe a lawfull Act, which is but transient we might yeild to avoid their force: But if they should affirme that the Government of the family were theirs by right, & that they intended to perpetuate it over us; we should think it a great sin to betray that place and power wherein God hath naturally and morally placed us.*

This

This indeed is a very fine ſubtilty to end in nothing: and I am ſure what ever the baſis of the State be, the baſis of his Argument is put on a quick ſand. For if he intend truth thereby, he ſhould have proved this maine thing: That the former Magiſtrate was our naturall parent, and that we all derive from him, as from a *Genarcha*, which being ſo evidently falſe, is as ill ſuppoſed. For in this confuſion of Families in the World, in which the originall Families are loſt: we owe no naturall duty to any, but to thoſe from whoſe blood we derive.

Anſ. The Magiſtrate in a ſtate, not as a Father of a Family.

Secondly, though it were true, that the chiefe Magiſtrate were our naturall Parent, yet it followes not, but there may be a caſe, wherein it might be reſtrained from Government; the Law ſuppoſes many, which is ſufficient to oppoſe this Gentlemans ſingle judgement; And If he be indeed a Presbyterian, he hath already concluded as much in the laſt Kings caſe, by concurring to inveſt his perſon with the accidents of War, in detaining him priſoner, at *Holmeby*, and *Newcaſtle*, &c.

Thirdly, I underſtand not what he means by *Gods placing a Magiſtrate morally over us*. For God he is our Divine and Supreame Magiſtrate: our Parent is our naturall and domeſtick Magiſtrate, and thoſe who command the State wherein we are, are our civill publike ſubordinate Magiſtrates under God; and every particular man who is arrived to the maturity of reaſon, is, (if any ſuch be) his own morall or private Magiſtrate. For the principle of a humane or morall action, is a mind acting freely according to vertue, and thoſe Lawes which are written within us. But if by a morall Magiſtrate, he means ſuch a one only, as is ſeated over us, and hath a care that we live conformably to vertue, and honeſtly in relation to others; then it followes that whoever hath the capacity ſo to hold inſpection over us, is a ſufficient Magiſtrate; but that can only be he under whoſe full poſſeſſion we actually are. Moreover he is to know againe, that States cannot look ſo ſtrictly after vertue, as after publike quiet. For moral vertue is a private thing, and by reaſon of the free concurrence of the wil, cannot be diſcovered certainly, but by thoſe who

Why States cannot looke so strictly after vertue, as after publike quiet.

are able to look within a man: But that which is *ad alterum*, and concerns rather wrong, then right, belongs to the Politicall Magistrate, as a thing which cannot without confusion have redresse otherwayes. For the chiefe convenience of a State is, that people might be kept from inconvenience, or incommoding one another; and that they may be conserv'd in a liberty to doe other good things according to Piety and Honesty: So that he who doth things in themselves good, though under an unlawful civill Magistrate, doth not by those acts assert any Magistrats right; but his only who originally gave Law and Rules for those internall acts, and that is Gods right alone.

Object. Lastly, whereas in this argument he saith, *a Father of a Family so abused should in his required submission sin, if he betrayed his place and power which God had naturally given him.* I answer

Answer. that there is a difference betwixt betraying a place so given, and loosing it by force (which indeed is his first supposition) The one cannot be done without sin, becaufe it is done voluntarily and totally by himselfe, but it is not our sin if we be forc't out of a place, to which we are compelled by a principle without us, and totally besides our power.

Ob. *But there is a lawfuller power visible enough to religious eyes, though for the present in an Ecclipse, and suspended; It is not lawful for a man to marry another woman whilst his own wife is in a swound, or for a woman to marry another man, whilst her husband is in captivity or restraint, and willing to come to her if he might.*

Anf. Of the Eclips suspention and extinction of supream powers. To this I answer; First, How knowes he certainly that the other Power is onely in an Ecclipse, or suspended? Or if it be onely in an Ecclipse, doth it follow, that we of the People might not doe lawfull Actions by the supplement of other Lights, whilst we cannot have that of the Sunne? Must we all that while cease to be men, for the absence of that which we cannot help? The Presbyterian partie would not have that understood so, when the King was in Prison at *Holmby*. There be no more Sunnes in the world but one, but there are many Magistrates, and such who give better Light one then the other; for which reason, God first chose not Monarchie for the *Jewes*. Certainely, in an Ecclipse the

Sunne

Sunne is never out of his naturall Orbe, though his light and influence may be suspended and intercepted from us: but when a Prince is in a foraigne Countrey, and lives under the Lawes of another Magistracie, and that all Lawes and distributions of Justice and Magistracie in the Countrey he pretends to, are made without him, and against him; will you according to the Lawes of Nature, Nations, or Policie, say he alone, and in that condition, is the Supreme Power or Authoritie of that Countrey; or rather, that we of the People doe nothing but sinne in his absence, though we doe things in themselves lawfull? If you will aske, how he came to be out of his Orbe, or Countrey? I am sure it was against the advice either of Presbyterian or Independent. It is easily granted, *That a man may not marry another woman, so soone as his Wife falls into a swound.* But you must againe be reminded, that the nature of Marriage and of Government differ extreamly there, where you suppose them most to agree. For Marriage is not alwayes necessarie to every particular man: but the publique Body of a People cannot be without Government one day, no more then a man can be without a Head; because a small time serves to the ruine of a man. Secondly, to take this or that woman to Wife, is a thing of free choise; but it is not so alwayes with the People, in relation to Kings, who have many of them committed great Rapes upon them, as I beleeve this Gentleman will acknowledge.

The union of people to a Government not like a marriage.

A woman may not marry another Husband, whilst her first is in Captivitie, and willing to come to her if he might. *Ob.*

These Cases of Marriage still make a very bad paralell with our present Case. For, we have been taught by all parties in this Warre, That a King of *England* is not as a Husband to the People of *England*: For, a Husband is he who alone makes and abrogates the Lawes of his owne Family, as a right of his proprietie, which a King of *England* could not doe alone in this State. *Ans.* A King of England, why not as a husband to the people of England.

To this purpose is that Argument in the grand Case of Conscience, [*viz.*] *The Apostle commands Wives to submit to their Husbands, surely* quâ *Husbands, not* quâ *men. But* *Ob.*

should

should a ſtranger come to anothers Wife and call himſelf Husband (having before either impriſoned or ſlain the rightfull Husband) and require ſubmiſſion, ſurely though ſhe might be forced, yet it were a ſinne to ſubmit to him thus as a Husband.

Anſ. I anſwer, to ſubmit in Adultery is a plaine ſinne; but for a Woman to ſubmit in lawfull things to the power of a ſtranger is no ſinne, though he pleaſe to call himſelfe her Husband, or exerciſe the Government of the Family. There is the ſame miſtake of Husband here, as in the former, ſo that the Argument built thereupon, of it ſelfe falls to the ground. But if by this he meanes that in matter of ſupreme Command, we of the People may not obey any but the Husband or the King, why then did the Presbyterian party for ſo many years oppoſe, and not totally ſubmit to their now ſuppoſed Husband? Why did they Commiſſionate ſo many thouſand Men, who by accidents of Warre had the power, though not the chance to kill him? Nay in the Parliaments caſe it was alwayes conjoyntly argued by them, that it was he the Husband, that would have killed them the ſuppoſed Wife, for which reaſon the Kirk of Scotland long agoe ſent him a bill of Divorſe, unleſſe he ſatisfied for the bloud of three Kingdomes. Which of the two parties it was that at laſt killed him, belongs not much to the ſatisfaction of us the people, though here queſtioned: becauſe thoſe parties as to that act deffer'd no more (if he will further argue it) then *diminutio* and *obtruncatio capitis* doe, for they who after a long War, and by long impriſonment diſpoyl'd him of that regall power (here ſo much argued for) did according to the term of the civill law, *diminuere caput Regis*, & they who in conſequence of his civill Death, took away his naturall life, did *obtruncare Caput Regis*, If he had been kill'd in an action of War before, ſhould the Souldier, or he who gave the Souldier Commiſſion have anſwered for his life? As for the ſubmiſſion of a Wife to a ſtranger as to her Husband, which is indeed a ſin, I earneſtly pray the Author ſeriouſly to conſider, whether he can excuſe us and all our forefathers from ſin, ever ſince this Kingdome long agoe fell under the power of an uſurping King, if this his way of arguing be true?

Of taking away the Kings life.

As

As for the second Demurrer, I conſider he hath given account to another very worthy Pen, which hath left little for my gleaning in ſuch a field; however I ſhall ſee what hath eſcaped his hand, that the world may witneſſe at leaſt, that truth hath lovers as well as errour and paſſion have Champions.

This Author and the grand caſe of Conſcience begin with St. *Paul*, Ro. 13. *That we* muſt *ſubmit to higher powers, not that we* may *lawfully ſubmit, and that not for wrath onely, but for Conſcience ſake, which is of things* neceſſary, *not of things* lawfull: *Wherefore* (*ſay they*) *it is ill ſaid that we may lawfully ſubmit in lawfull things, obedience as a matter of Conſcience being a thing neceſſary.* *Ob:*

I grant it either in lawfull or neceſſary things, when obedience is required from thoſe who actually have the whole ſupremacy of power in themſelves. If I hold this lawfull, and he hold it neceſſary, we are not contrary; He onely makes what I allow more allowable. But the reaſon wherefore the *Apoſtle* requires obedience to ſuch, Not onely for wrath (which is onely in regard of the power which they who are ſupreme have to deſtroy us) but for Conſcience ſake, is, leaſt by our reſiſting them we unneceſſarily diſturbe and draw calamity on others, and likewiſe in regard of their Authority from God, *Tyrants even in title* not arriving to the great Dominions of the Earth, without Gods ſecret order, God having clearly ſtated the Government of the world for ever in himſelfe as his chiefe Prerogative, he not being known or feared any way ſo much as by Dominion, which made St. *Auguſt.* in *C. Dei.* rightly ſay, *Poteſtates omnes ſunt à Deo, non omnes voluntates*, ſo that the reaſon wherefore God permits ſometimes ſuch Princes to attaine to theſe powers, is the ſame wherefore he permits Devils in his Government of the world, a *Nimrod*, or a *Pharaoh*, a *Ceſar*, or a *Herod*, an *Antichriſt* or a *Turke*, who as bad, and as uſurping as they are, and ſeem to us in exerciſing ſo ſevere, though ſo ſecret a part of Gods Juſtice, yet fulfill ſeverall prophecies, which ſhewes they come not to what they are, meerely by humane contrivance by chance or accident. *Anſwer.* Of obedience for wrath, & for conſcience ſake. Tyrants in title from whom.

The grand caſe of Conſcience. P. 3. *diſtinguiſheth betwixt Au-*

thority

thority or Power, and Rulers deputed to the exercise of that Authority. The first is by Gods positive Ordinance, the other but by his permission.

Of our lawfull submission to a Magistrate, who rules by Gods permissive will.

Here he grants enough as to our case, which is of obedience, for if he can assure me that it is consonant to Gods permissive will that such persons be my Magistrates, I am well satisfied then, that Gods will is, I must be their Subject, Gods free admission of one being the necessary exclusion of all the rest, so that subjection is not a thing now of my choice, but of my necessity.

C b. *But the Demurrer, P. 3. would know what difference there is in popular obedience to lawfull powers, and unlawfull powers, if obedience be necessary to both.*

Ans. Obedience necessary to lawfull and unlawfull powers, how different.

I answer, if the powers here supposed by him agree equally in their supremacy, and absoluteness, and differ onely as one is got lawfully, the other unlawfully, then the difference of our obedience to either, is onely in the difference of things commanded, as they are either lawfull or unlawfull; neither can the Author (now arguing so much for a lawfull power) conscienciously tell us, that the lawfulness of the civill power commanding, can make our obedience necessary to an unlawfull thing commanded; but rather that it makes that power then become to us in some manner unlawfull, and worse to us of the People, then if we were under the absolute command of an unlawfull power which exaxts nothing but lawfull things. The knot of this point lies here, *Whether a civill circumstance* (such as is the Magistrate either lawful or unlawful) *can vitiate an act which is either directly or redictively of morall duty?* I believe his distinction P. 2. of a *Government constituted or constituting*, servs nothing for the discovery of a supreme lawfull power in it selfe. For I hold that whatever was once a sin may alwaies be called a sin, though with rooting or without rooting. Not but that God and we may make good use of other mens bad actions if they be such, for which reason poore beggers may in their extremities receive necessary Almes from those who came to their estates by wrong and oppression; by the recept whereof they doe not justifie the Title of such Estates, much lesse

How we may have a right to take what another may not have a right to give

doe

doe we justifie the unlawfull Title of a supreme Magistrate, from whose care we receive necessary protection. I say *much lesse* because cases of Estates are *juris privati* and have courts to judge of them, but the other is so much *juris publici*, that there is no mortall court to judge of it, for which reason how will these Authors (what Governours soever they desire) evidently prove that they originally had lawfull Titles, or that they at first did not forcibly take the people to themselves, but that the people voluntarily resigned themselves to them which was not in *Nimrods* Case. From whence this may be infer'd to the satisfaction of the grand case of Conscience, p. 3. That if he had that desired Governour, yet according to himselfe he would not owne him long, because he were not sure to have in him a supreame power, such as the Apostle, *Ro.* 13. in his sence understands necessary for the Kingdome of England. But in our sence of plenary possession, which was the case of the Apostles time, we can easily see first, how our present power is the higher (the whole Kingdome now receiving all law, protection and subordinate Magistracy from them) and how they may be in lawfull things obeyed according to the same Apostle; and to the duty of our Creation and being in this world.

The difference betweeu private Title & publike.

Of possession.

The case of conscience p. 3. *acknowledgeth that a Government may be altered; but it must be done still by the higher powers, whom we ought equally to obey in submitting to an altered, as to a continued forme: But it is a sinne if a party forcibly lay the higher powers low, and exalt obedience as to the legall authority.* *Ob.*

I thought that he who in his sence understood the Covenant *in terminis* Eternall, would not have allowed a change of Government here; no more then he might alow the Scots (though upon never so much reason to themselvs) to change their Doctrine or Discipline; because we swore during all our lives, to preserve that which was established among them, at the time of our swearing. But I now see we may well distinguish betwixt the Covenant it selfe, and some Covenanters, the Covenant being as open for one change, as for the other. *Ans.*

Secondly, If a Government though never so reasonably

Of supreme powers altering themselves by joynt concurrence.

reformed or altred, be never in any lawfull things to be obeyed, (terms which he did ill to leave out of his Argument) unlesse by the concurrence of all the higher powers; then farwell all the old consequences of *Salus populi suprema lex*, and the Presbyterians former Armes are unjustifiable. How corrupt and Tyrannicall are most of the Governments of the world, & yet how many of those supreme powers hath he observed to reforme themselves? or diminish any thing in themselves, to alter for the better? although the taking away of something in a Government, may be as necessary, as continuing any old or new thing in it. Certainely these Authors have read but few of *Ionases*, who voluntarily renounce themselves to settle a Tempest.

How seperately.

Thirdly, Our Alteration was made by the present supreame power of the people: and the reason wherefore both Houses laid the exercise of Regal power aside for some years, made the Commons as they have argued it, lay it aside for altogether, *viz. Salus populi suprema lex*; the laying of it aside for some yeares is argument enough to us of the people; that it might be laid aside for more yeares, and that one King might be laid aside as well as another. for to us it seemes effectually all one, *Non esse & non operari*, for a thing not to be at all, and in this world to doe nothing at all. If they fin'd who did this, is that any thing to any but themselves? It is an Axiome of good Law *Noxa sequitur caput*. Thus whilst his Argument should have bin against our lawfull obedience, it is against their exacting it, as to the legall authority, which yet is grosly falſe; for they exact it not to the old legall authority, but as to the present supreme power of the people, *Non nomine Regis, sed nomine populi*: & yet in one good sence it may be still called the same legall Authority, because we have still under it the same lawes for our properties as before, and continued in life by them as our lives themselves are.

Ob. *Case of Conſ. p. 3. it is objected that this principle of obeying those only who are in plenary possession of all supreme power is fit only to destroy States: for then should none Governe any longer then their swords & strengths could beare them up.* I conceive

Anſ. according to

to what is already proved) that nothing can be found, either more consonant to Christian charity, or to the preservation of States, then this our principle of obedience; besides he knowes no Kingdome in the world, where people doe not obey upon this same plenary possession; Allegiance alwayes relating to protection. And if according to his consequence we should suspend all obedience till we have infallibly found out that Person who derives a known and an undubitable right from him who was the first in compact (because according to these Authors intermediate intrusions, are violations of rights, and may not be obeyed even in things lawfull) then I pray you of what can we resolve lesse, then certainly to extirpate one another? which will come to passe ere we finde what we search for in such a blinde scuffle; and for feare of doing a lawfull thing under the inspection of one, who is suppos'd to have done another thing unlawfully; must we resolve of doing all unlawfull things by warre our selves, and desert unnecessarily, the cares of Wife and Children, of Church and Neighbour? For non-obedience in a State is but a *Chimæra*, neutrality, a State without relation; there is no substance for it in any State, and unlesse you will allow me to concurre with others, and under others in lawfull things, I must leave the World; my subsistence being only in a conjunction with others here in this jurisdiction.

Demur. p. 8.

Of non obedience.

The two Demurrers p. 3. & p. 7. *Except against this our present obedience, because the present power is yet new: neither is there a totall cessation of all hopes of recovery.*

Ob.

Philosophers hold that the Definition of a man belongs to an Infant, as well as to one of many years. Because after the Organization of the parts, he is informed with the same principle of life and reason, as a grown man is; and having the same forme, is the same thing. Even so the present power hath possest all the parts of this Kingdome, gives them life in the administration of publike justice and protection, which are the soule of a State, and the power which preceded this, what did it infuse more vital then this? And now that that is taken away, if this other did not presently enter

Anſ.

What time makes a form'd Government.

ter into i'ts place; The Common-wealth were dead; and each man were left in his naturals, to subsist of himself, and to cast how he could in such a state of Warre, defend himself from all the rest of the world, every man in this State having an equall right to every thing.

Wherefore let every man, especially, they who would informe consciences, take heed of effecting popular revenge, which must also reach themselves at last: for when they have once frighted people from lawfull actions, what can they then commit but the unlawfull? Into what an unhappy transport are we fallen, that such a principle should be derived from our Church, the very Papists being ever ready to obey in things lawfull, though the State seemed to them unlawfull. These will judge better of the State now then of the Church, the one inviting and incouraging us to lawfull things, the other deterring us from them. But to return to the Argument; I have already shewed, that new or old powers, never can signifie good or bad powers. The uncertaine hopes of recovering in the future, proves that the thing is certainly lost for the present, and it is our obedience at this time which this Question relates to. However the King of Portugals acquisition, or Usurpation was presently acknowledged by our King and others, although the King of Spaine then had, and still hath great hopes of recovering it, he being alwayes *Hannibal ad portas*, and never removing out of his own Dominion into another Forreigne Magistracy.

Ob. *The first Demurrer* p 7. *conceives our present condition like that of* Israel, *betwixt* David *and* Absalom, *at which time* (*quoth he*) *the people had grievously sinned, had they rendred obedience to* Absaloms *commands and substitutes, so long as* David *was living.*

Ans. This is very true, but far from the purpose. For *Absalom* was not a fundamentall legislative party in the state of *Israel*, as the House of Commons lately was and so could not pretend such a right of Warre. Secondly, *David* had his Army hard by in the same Kingdome with *Absalom*. We have none here but the Parliaments, all the Kings forces and

Our condition different from Israels betwixt David and Absalom.

adherents being dissipated. Thirdly, the *Israelites* scruples are supposed during the time of Warre in *Israel*, ours after the War is ended. But if he mean by this fallacious paralell, that the *Israelites* ought not to have opposed David at all in the way of Warre, then how will he salve the scruples of his own breast, who promoted the course of Warre as well as others against the King?

The Author of the grand case of Conscience is very ingenious in his contest with his adversary to forme a Syllogisme with foure terms, and then be able to finde them out, and to answer the fallacy: so that whilst he wrestles thus stoutely with himselfe, he can have but a faire fall in his own shaddow, to prevent which I shall take the pains to part them both. His Syllogism (as he imputes it to his Adversary) is p. 4. §.

If the people of the Roman Empire did submit to the power of Claudius *and* Nero, *who by force were put upon them, then the people of England may lawfully submit to a change of government though believed unlawfull.*

But they did submit. Ergo those of England may.

Here he excepts against the equality of inference made betwixt those whose persons were without due Title forc'd upon people, but still *in the same* Government; and those persons who without right of Title force themselves upon us now *in another Government*.

But what if the Syllogisme be indeed and vertually onely this?

If the people of the Roman Empire were required by the Apostle to continue obedience to Claudius *and* Nero, *then the people of England may lawfully continue obedience to their present Governours.*

But those might, Ergo these may.

His distinction of persons intruding wrongfully into the same Government, and into a different Government according to his former position satisfies not conscience in either, because both are supposed unlawfull and differ only *secundum magis & minus qua non variant speciem* so that if obedience were not a sin in one, it is not a sin in the other. If he say

Obedience to false Governours in the right, or wrong Government varies not the sin of obedience.

say, obedience to intruders into the same Government is not a sinne, then he hath dispatcht all controversie concerning the exclusion of the Kings Line, and that the Parliaments fault as to him was that they rather changed the Government then the Governours, which he acknowledgeth more plainely P.5. where speaking concerning the persons comming to power, he saith it is not materiall who puts them in, nor what men are put into powers ordained by God. But to come nearer to the point, he cannot say that of the usurping Cæsars, which may be said of the Parliament. For these are the representers of the people of England, and were lawfully a third part of the supreme power before the change of Government. Cæsar had no part of supreme right, but what he rather usurped then acquired by any dicision of right, or fundamentall legislative controversie betwixt the Senate and him. To say as the Demur. P.4. That Cæsar had gotten the consent of the Senate, & added compact to his conquest, is absurd, unlesse he means he had gotten the Senate so into his power, that he had them in a condition of Quarter; in which case as the Law saith *principium rogamina sunt mandata*, without doubt if the peoples submission to Cæsar were lawfull upon his changing a Republique into a monarchy, after the Senate had forbad the aproach of his Army, and that he had expelled many members from the Senate, why may not a lawfuller obedience be given to those of a Senate it selfe, who have changed Monarchy into a Republike? These two changes are so far alike, that they frustrate this Authors distinction of persons intruding unlawfully into the same, and into a different Government.

Wherein Cæsars case and the Parl. disagree.

Wherein Cæsars case and the Parl. agree, as to justifie our obedience.

Ob. *He follows his objection still*, p.5. *arguing that though people did* de facto, *obey such false possessors, and Usurpers, yet that proves not the lawfulnesse of our obedience*, nam a facto ad jus non valet consequentia; *their submission should have been proved legall.*

Ans. If he hath a quarrell to us for our peaceablenesse, yet why should he quarrell with St. Paul?

He bad the Romans submit in the same kinde; and unlesse

leſſe we had Prophets on purpoſe to tell Governours, as well as us of the People, who muſt alwayes ſucceed according to the minde of God, then the ſtate of the world, the nature of politick juſtice of ſociety and Religion, is ſuch that we may and ought to ſubmit in obedience to thoſe who plenarily poſſeſſe, protect and command us lawfull things. ſurely he did not conſider his Axiome well, for *à facto ad jus valet conſequentia*, from fact we infer many civill rights, as cuſtome and preſcription, &c.

Neither is it neceſſary to prove their ſubmiſſion legall, if it be proved abſolutely neceſſary and equitable.

In what ſenſe the preſent ſubmiſſion is legall.

And yet we conceive another caſe (beſides that before mentioned) wherein this ſubmiſſion to a new power may be call'd legall. For the end of all law and Government is to preſerve our perſons and eſtates; and they who are in ſupremacy of power, have power to preſerve or deſtroy both if they pleaſe; and therefore have as great a power over our lawes, which are leſſe then our lives. So ſoone as one ſupreame power is expelled by another law, life, and eſtate, fall all into the hands of the ſucceeding power; and what it doth not actually take away, ſtands in effect as deriving from it; and if that ſupreame power make a ſanction for our obedience to it (as alwaies is immediately done) then we may ſay, *our ſubmiſſion is legall*, or elſe the ſupreame power cannot make a law.

To that argument where we aſſert, that that Authority which excludes all other Authorities, muſt be obeyed, or elſe all authority fals to the ground; *The grand caſe of Conſ.* anſwers obliquely ſtill, *That notwithſtanding ſuch authority can never illegally get the legall power: nor can it exclude others from their authority.* In which anſwer he plainly contradicts himſelf, *pa.7.* For Cæſars power was (according to himſelf) legal, and yet got by a Circumſtance very illegall; the Senate being empty, and intimidated, and not ſo much in their own, as in his power.

Anſwer. Of the cleare evidence of old rights, ſo as to ſatisfie conſcience for actions of warre upon them.

This argument is ſo far from concerning us, that it is directed only againſt thoſe Princes who *ab origine*, derive from illegall acquiſitions. Of which he will do well to ſpeake largelier

largelier, when he can assure my conscience by infallible evidence of right, that I may safely sweare or destroy men upon it, that there was ever such a man in *England* as *William* the Conquerour, or any other ancient King, from whom Titles are said to be derived, either legally or illegally. This is a proposition, which I beleeve he in the midst of his peremptorinesse was not aware of, no more then I now doubt in whose hands the present possession of the Kingdom is; for which reason they assert their Authority, and it is his part to shew how infallibly it appears to be anothers by indubitable right, *ab origine*.

But because it is argued, that in the disquisition of a right Title, none are so blinde as the people (who among other burthens have the imposition of other mens judgements cast upon them) therefore an usurped Title to them is true enough to exact obedience.

Ob. Hence the grand case of *Cons.* answers, p. 10. *That then by the rule of contraries it followes, That when Titles are visibly unlawfull, people are dis-ingaged from obedience to them.*

Ans. To this I reply, that this answer is nothing but a meere repetition of the question, and hath no medium of proofe annexed to it; the very question being this conclusion, *viz.* Whether obedience be lawfull to Titles visibly unlawfull.

Secondly, It hath been shown, that non-obedience and subsistence in a State are incompatible; every man in a State stands in a relation, and must either command or obey; and owes something to him, by whose care he sleeps quietly in his bed.

Thirdly, if by dis-ingagement from obeying a lawfull Title, he means that we may choose whether we will obey or no, then though dis-ingaged, we may obey.

These answers help us half way over the next difficulty.

Ob. *We may not any way affirme the right of the Usurper, or deny*
Demur. p. 7. *interpretatively the just Title of the Heire, without the guilt of treachery, lying and falsenesse, if not of vow-breaking, in suffering a Thiefe to take my purse, I cannot help it; If I must part with that or my life, I chuse to loose my purse; not for feare least I*

breake

breake the fifth or eighth Commandment; but least I breake the sixth, in being guilty of self murther; yet rather then say he hath authority to take it, I must lose my life. In point of protection among theeves, I may desire some to preserve me from others, yet may I not say their robbery is just, or joyne, or ply with them in robbing others.

To say no more of the certaine evidence, and of the indubitableneſſe of ancient originall Titles (which is here the maine of the Argument) I anſwer that ſimple obedience to an eſtabliſht Uſurper, doth not alwayes interpretatively affirme his right or deny anothers, but affirmes rather the irreſiſtibility of the poſſeſſors preſent power. God is the ſupreame magiſtrate of all the world, and by reaſon of his Omnipotent preſence every where, we cannot exclude him from the cognizance of, or right to any of our Actions; but our earthly Magiſtrates may fall into ſuch circumſtances, that they may have neither perſonall nor virtuall preſence with us, and therefore may be ſaid to be civilly dead, according to the former Axiome, *Idem eſſe & non operari*, to do nothing, and be nothing, is to us the ſame thing, motion being the chiefe evidence of life.

Anſ. Obedience ſometimes aſſerts not a Title but power.

In his caſe of the Thief, I deſire any man to conſider whether (as he hath put it) he hath not clearely broken one Commandment, beſides thoſe which he hath named, *viz.* the third, becauſe it is an untruth to ſay, the Parliament requires not obedience from any of us, unleſſe we all acknowledge the lawfulneſſe of their authority, which is the ſecond falſe ſuppoſition here.

When Officers gather Taxes for the State, they have no commiſſion to demand our Declarations of the States authority firſt, but onely to receive the money taxed, which this Author knowes is a truth known to every one. As for the peoples conjoyning and complying with the State to rob another, by obeying to the prejudice of another, he muſt meane it in a robbery either of power, or of riches. For power, the people aime not at it, their condition alwaies is ſubjection, whoever ſits at top. And for getting by the warre, I hope the Presbyterian party which had the au-

They who obey a wrong Authority rob not the right.

 thorizing

thorizing of Taxes, as well as others, knows as well as the people themselves, that this is a grosse prevarication. Last of all there is difference betwixt willing complyance, and necessary subjection, which is the peoples case.

Ob. *He objects againe, p. 6. If obedience be necessary, then a Title once wronged can never be lawfully righted, it will be sin to help the weaker party, or to rescue our selves from perpetuall slavery.*

Ans. Here he is started suddenly into two other questions: First, How a Title may be recovered? and secondly, How we of the people may rescue our selves from the slavery of any Titles? These two relate to the future, which is of Gods secret disposing; our question is of the present onely.

Of the recovery of dubious Rights, & the benefit which people get by most warres.

But I pray you what do people get when wars for recoveries of dubious rights are long and calamitous? What are the people of *France*, or the people of *Spaine* better for the long and hereditary anger of their two Kings? Or what was the world better for *Alexanders* conquering it? The Houses which are burnt, and the millions of bodies left dead in the field, are the Peoples; and Princes scorning to derive from them, still trample them to dung. We talke of some Titles wronged, as if their rights were so certaine, and so necessary to live under, as God almighty is, who yet disposes of the changes which are made here among his chief Officers, and not we; Who is it then that can right wronged Titles, but he alone who makes all Titles right?

Ob *To that case where it is argued, that if the Masters mate had thrown him over-board, and by power would suffer no other to guide the Ship but himself, if the Mariners will not obey him commanding aright (for the safe guiding of the Ship) the Ship must needs perish, and themselves with it*; It is answered by the Grand Case of Conf. p. 9. *That the case should not have been of a Mate as a partner (which is false) but of a party of the Seamen, who coming to shore should bring the other obeying party to punishment, especially for acknowledging the Vsurping Stearsmans right (which is still falsely suppos'd in our case.)*

Ans. The case of the Master of the Ship thrown over board.

Here I desire this Casuist to pull off his maske and speake plainly, whether he doth not plead for his own punishment, as one who at the beginning of our warre principally incoura-

couraged us not to be guided by the then pretending Stearſman, whom they of his party laid aſide, and ſtear'd a while themſelves; the Scots declaring that he was not fit to touch the helme againe, till he had ſatisfied, &c.

Beſides, this is true, that they then required obedience from compounding Royaliſts, although to them they ſeemed an unlawfull power and Magiſtracy, as to the diſpending of publique and private juſtice.

Secondly, the reaſon wherefore theſe mariners might not acknowledge him the right maſter, (as he hath varied the caſe) is rather becauſe this is in an inferiour thing *de jure privato*, Maſter and Mariners being accountants to the Merchants who have a Court of Juſtice to judge the fact; but what Court is there in this world to call that power, which here is the ſupreameſt to any account?

Thirdly, he ſuppoſes the uſurper and the complyers to be brought to account by the others, *but not till they come to ſhore*; whereas in our caſe we can do nothing but in the ſhip, that is in the common-wealth, when we leave that, we go into another world, our true *patria* where indeed we do not call one another, but are all called together to an account by our ſupreme Magiſtrate, whoſe ſentence he would faine pre-judge here by a confuſion of the ſhip *in via*.

Ob. *The grand caſe of Conſcience*, p. 9. *adviſeth, That ſeeing we are ſo unſetled, we ſhould uſe meanes for a ſettlement, though by its procurement we were more unſetled: If a man be at the rivers brinke, he would adviſe him to keepe out of the water, but if at once he leap into the middle of the river, he would perſwade him to come to the bank, although he wade through much water to come thither.*

Anſ. I ſee according to this horrid tenent, that if God (as the Scotch phraſe hath it) comes not to the whole length of our deſires, then there muſt be no peace betwixt man and man in this world; ſome Presbyterians have publiquely acknowledged, that God is to be thankt for ſomething, that Church doores are yet open to thoſe who have a zeale, and a will to congregate, that they are not under their enemies ſwords, nor compounding with them; They ſaw how they might

Whether we be actually in the unſettlement & deeps which he ſuppoſes?

might be worse, if God should through their peevishnesse let them see forrai ne armies at their doors, who have both faces, tongues, religions and affections different from ours; and will not care for firing houses and Churches, or for giving us lawes againe in an unknowne tongue, and perhaps Religion too. Can this Casuist thinke the Notion of our Church-government would be a charme to such swords and consciences? Or rather can he assure us of his prophecy here, that if we begin new troubles, we shall certainly have victory? For his argument supposes it must needs end so, and that by his perswasion *we shall wade to the banke.* If we were indeed in the midst of the water (that is, in the midst of warre and confusion) then being ingaged for life, we might endeavour to wade thorow, though the streame were running deep with our own and childrens innocent bloods, for after all Metaphors, that is the element which he means. Thus in no diseases but those which are supposed deadly, may we use desperate remedies, such as may endanger the destruction of the whole body; But may a man indanger his whole body, when it is not for the cure of himself, but of another, and by the killing also of others besides himself, wife and children?

When the whole body may be hazarded for a desperate remedy, and when not.

I will not name what sort of subtilty this Gentleman hath used in this argument, nor define with what conscience here hee seekes to satisfie anothers; For, lest we of the People should bogle at comming on the Stage to act our late Tragedy over againe, he would impose it on our beliefs, that we are still in the middle act of it, and that we ought to finish it. It is high time for him to consider, whether if we run along with him in this, we should not 1 Joh. 3. 17. *shut up compassion from our Brethren, and shut out a great part of our gratitude towards God; although I confesse some scars and haltings may remaine yet, after the warre it self is ended. Me-thinks he should finde every thing, both in Nature and Christianity, more favourable for our present Peace, then for our third Warre, especially seeing all our former warres have ended very contrary to the expectation of those who were hottest to begin them. But I consider that passion is the last hold out of which we are beaten, of which the fuller men are, the lesse do they (through*

a great

a great judgement on their spirits) perceive into what deformities they do transport them, it being the nature of all intoxications that their defects are better perceived by any, then by those who are oppresst by them.

The second Part:

That this obedience to the present Government, is not contrary to, but consistent with our Solemn League and Covenant.

BY these steps we are come at last *ad sacras columnas*, to those sacred Pillars on which the holy Covenant hangs almost in every Church, as a *sanctum aternitati* a law sacred to eternity. The hands which hung it there, have not (they say) power to take it downe againe. Who therefore may undertake to tell these persons, that they actually are, or else may be freed from it, seeing they finde themselves obliged if they can, to tie all the world with them in the same sort of knot?

Here is certainly a zeale worthy to be fixt on that, which should oblige alwayes; and the world must confesse that there hath been no publique oath taken by any persons any where; who have been more scrupulously attent not to double with their God, in relatiou to his part in contract. But yet let not these consciences be scandalized if I say it was compil'd by none but mortall men, taken onely by such, and as a promissory oath cannot possibly be free from those exceptions, and accidents wherewith time changes the constitution of all those things, which it doth not absolutely destroy, wherefore upon a sober re-view of all, I doubt not, but as many Oaths and Leagues are transient, so to shew that this, according to its nature, and as it is originally a

League

we are stil obliged to many things of the Covenant but not *qua* league or Covenant.

League or Covenant, that is, as it is a formall compact, relating to the publique and united co-operation of severall Nations and Magistracies (by which each people were united together, and without which neither people were respectively to act any thing separately within and against themselves) I say I doubt not but to shew that such a Covenant, upon what hath interven'd is expir'd to us the People of *England*, and that without any default of ours; And though our Magistrate would give it a new life and obligation; yet to many principall things it can oblige no longer; and for the rest we are to consider, that though something of our first end in reformation streame through the Covenant, yet its spring head rises higher then it; which end we are in all formes to pursue still, and are now left ty'd to so much of the Covenant onely, as we were obliged to for all our days with all our mights and soules, before we tooke it at all. Lastly, if it were granted, that the Covenant is not expired, yet I shall here shew, that our submission to this present government is no way inconsistent with it.

In which few words, though I have stated the maine of its difficulties, yet ere I apply my self to answer objections, I shall briefly premise what I have observed others have omitted, it being hard to finde how we may be unti'd from a thing, till we have found how the knot at first was made.

Of promissory and assertory Oathes.

Whatsoever we can say, affirme or deny, is either assertory or promissory. The first relates to the time past or present (*as if I affirme* Titius *to be, or have been at* Rome, and therefore upon the very saying or swearing, the whole truth and obligation is fulfilled, and past with the time which accompanied it. The other relates to the time present, as it is then sincerely said or sworne, and to the future for the sincere fulfilling them, which yet is dubious, conditionall, and not in our powers; *As when* Titius *promiseth* Sempronius 100 l. *when his ship returnes.*

Whither a promissory Oath, which alwaies involves a Tacite condition be lawfull,

For this reason some say all promissory Oathes are absolutely unlawful, because Oathes must be true and certaine; but all future effects of things are uncertaine.

I an-

I anſwer, that for ſo much as concerns the forme of my Oath here, it is true and certaine, that *my minde and words* went truly together in the act of ſwearing, and that I will make *my deed and words* goe truly together, when the ſuppoſ'd condition betwixt us (and which, as we mutually conſent to, is in neither of our powers at preſent) ſhall abſolutely come to paſſe. this was the caſe of *Abrahams* ſervant, when he ſwore to take a wife for *Iſaac*; a future (in ſeverall circumſtances) very uncertaine, both in reſpect of what might happen to the ſervant, to *Iſaac* and to the Virgin: we know what hapned to *Job's* Children and Family through the accidents of War, and the malice of the Devill; and how *Joſeph* was ſhuffled away by his own friends and kindred. *Anſ.* Gen. 24 2.34

It is not enough to ſay, ſuch ſuppos'd tacite conditions cannot be in Oathes; For firſt, If ſuch conditions be in promiſes, and that I may lawfully make a promiſe to another, then I may lawfully ſweare a promiſſory Oath to him, which we ſee cannot be ſeparated from ſuch conditions as are not, cannot, and need not be expreſt betwixt us at the beginning. For (to take away the ſuppoſition of fraud betwixt us) we both agree in this that we cannot foreſee with what circumſtances our futures may be perplext. Therefore it is ſufficient that we ſwore *things not neceſſary, but poſſible*; ſuch as might happen or not happen, becauſe depending on things which depend not totally on us, nor on our wills, but rather mixtly on the wills of others, and on that which to us is change or fortune, For which reaſon he is not forſworne, who effects not alwaies what he by Oath promiſeth, no more then he ſinnes, who alwaies effects not his ſimple promiſe. Of tacite condition in Oaths concerning things poſſible.

Secondly, This tacite condition in a promiſſory Oath, and in things *naturally and morally poſſible*, is proved by the very nature and definition of the Oath. *For it is onely an atteſtation, and imprecation of God in ſuch manner, that if the promiſer faile, he would have him to whom he promiſt, underſtand, that he puts himſelfe under Gods ſevere wrath.*

From hence it is to be noted, that the bare promiſe obliged

The obligation of a pact, or promise with an Oath or without an Oath, is all one.

liged as strictly before he swore, as after he swore; and the reason is, because he was obliged by nothing, but by that which was in Pact. The investing it with an Oath, or with Gods punishment, relates onely to the *Penalty*: so that a promissory Oath signifies no more, then such a penalty upon such a promise: But a penalty (as we know) in law and equity relates onely to that which is unlawfull, such as is the violation of a Pact.

The addition of never so many penalties, to a thing in it selfe unlawfull, can never fasten any obligation on me to do it; Nor can severall Penalties to an obligation in it self lawfull, adde any thing to the first *Jus* or right of it, but onely *to my future feare*, least I doe injustice.

The Capitall question therefore in these cases will be, what the nature of the things are to which we obliged our selves at first? For according as they stand or fall, our relations or obligations to them stand or fall whether we will or no.

1 King. 2. 20. 21. 22. 1 Sam. 25. 22 Jo. 3. 10. Gen. 24. 2. 3. 4.

Thirdly, We finde such tacite conditions, conceal'd, and suppos'd in the Oathes of *Solomon* to *Barthsheba*; of *David*, concerning *Nabals* house; of God concerning the destruction of *Niniveh*, and of *Abrahams* servant concerning *Isaacs* Wife, &c.

By a reflection on all this, *viz.* That seeing there may be a promise, and consequently a promissory Oath; and that the nature and obligation of a promise, and of such an Oath, is one and the same, we have gain'd a great point, *That the Covenant (which is a promissory Oath) is not in its own nature of an eternall obligation*, but is involved in tacite conditions and accidents of the world, which may justly incumber us from effecting it, or from being further obliged to it, as well as other promises may, which yet are made *bonâ fide* at the beginning. The difficulty onely is to see, whether *de facto* that hath interven'd, which hath now taken away the *formall and originall obligation*, which we of the people had to it at first, by authority of our Magistrate; and so taken away, we may be secure and out of feare of the penalty, which we then submitted to in it.

I

I shall not here make use of what others have laborioully argued; The matter of the Covenant is such, as we cannot be obliged to, but let it be as good or as bad as men please to suppose; I say in the first place, that all the good or bad, was form'd into a *Politicall Oath*, authorized upon two Kingdomes, by the sanction of two publike Magistracies; who as collaterals obliged themselves to co-operate faithfully together, and obliged those of their distinct Nations, to co-operate respectively and subordinately with them, for attaining a former end in such a way of Reformation, as is therein expresst; but by such meanes, as they in their publike and respective capacities, not we in our particulars should judge most consonate to equity and to true Religion. For which reason we happily are pointed at there, *onely in our private places and callings:*

Argu.

The Covenant a politicall or State Oath.

Here therefore there is a relation of severall things concurrent, *viz. Of two Magistracies* united as a means for the easier reaching the end of those respective reformations, which they were obliged to make before they entred in league, and *of two people*, who by the union of their respective Magistracies, passe (for so much as is therein expresst) into an union one with another, and are to have their private capacities and endeavours managed by them, and never against them by any virtue of this league. Besides it is a considerable circumstance in the Magistrates managing the whole, that States or civill constitutions by reason of ambition and avarice, are naturally as much subject to future changes, as any other things are; and without the supposition of tacite conditions, we may as little sweare to preserve the State of a publike body, as we may sweare to preserve the State of our own particular bodies, or as a parent may to preserve his Childe, which when it shall be taken away by diseases, or by justice, he may be sorry for the losse, but may not justly complain of it. And indeed so it is come to passe without any default in us of the English People, or of our publike Magistrate (under whom we were to act in these private places and callings) that neither of us can be said to have laid the Covenant aside, although we could not

The subordinate conditions of his Oath.

keep it from expiring; becauſe the failing was in that which was never ſuppos'd to be in our powers, *viz.* in many conditionall things which came croſſe, and in the breach of fidelity in another collaterall and concurring power

Ob. *If you pleaſe to object here as an aggravation, and an incitement for us of the Covenanted people to riſe kill and ſlay, that the Covenant is buried not as a thing really expired and dead, but that the people out of intereſt muſt be told ſo, onely becauſe the former Magiſtracy is really laid aſide and changed, which if people ſhould throughly conſider, would quickly make them finde matter enough in the Covenant to take armes.*

Anſ. I ſhall not in the way of anſwer to this repeate any thing concerning the cauſe, the meanes, and the concurrences to this our preſent change; every Covenanter both of *England* and *Scotland*, knowing well that there was no change of Government here, till the Covenant was Nationally broke, (and ſo many here were inſnared, both Royalliſts and Parliamentarians) by the Scots, who thought to have uſ'd it for a change of Government, and as a ſtratagem to give law in another judicatory: Neither ſhall I argue in this place, how compatible any change may be with a Covenant ſo conditionall, in which Kings as Parties are totally excluded from judging either for themſelves or for others, which point ſhall be further argued at laſt; But I ſhall content my ſelf to take what is here granted in the objection, *viz.* *That the Government is really changed*; The conſequence then to us of the people will be, that ſeeing by the fourth Article of the Covenant we may not without apparent breach of it, act the ſence of the Covenant, but as we receive it from our reſpective and ſupreme judicatory of *England* onely, and that the ſaid Government which it relates to, is confeſt to be gone have you not then clearly confeſt that the obligation to act any thing publikely by Covenant is likewiſe gone? according to an old Axiome, *Sublato relato tollitur correlatum.*

Our change of Government, whither as the firſt cauſe, or as an effect of anothers former breach of Covenant can neither way authorize us to riſe againſt this Government.

If this preſent Government which we are chang'd to, and which now protects us, ſhould think fit by the way of Covenant to give a new life, to that remaining part of it, which may be obſerved, yet you will not allow any obedience to them

The Covenant obliges us not againſt the fifth commandement.

them, though in things never so lawfull; neither will that fourth Article allow me to obey any forreigner, nor those without whose consent the Covenant was made, and consequently without whom it is to be interpreted, as the late proceedings of the *Scots* at the *Hague* plainly shew: So that after all this, if I in my private capacity be as you say still indispensibly oblig'd by it, to begin or assist to publike troubles, do you not fall into a worser absurdity, and maintain an Oath against the fifth Commandement, or against all Magistracy, which is an impossibility? Nothing ever cautiond in termes more expressely for our duty *of making discoveries, of bringing to condigne punishment, of our supreme respective Judicatories* and the like then the Covenant did, which are things relating to none but our supreme Magistracy, unlesse you please plainly to assert another absurdity, that every single man who hath taken it, is thereby absolv'd from his Magistrate, and is made one himselfe to judge of the other, and thereby authorizd not by way of Toleration to professe, but to establish what Religion he would, to punish at his tribunall whom he would, and to reforme the state as he would. For he to whom you will allow a capacity of making war, hath also a capacity of making Peace, and Lawes for the security of his Peace.

Page 15.

The Covenant makes not each man a Magistrate.

Thus we see how the Government is changed, and the formall obligation of the Covenant at an end; But what if I should grant you by the way of supposition, that in case both the Covenant and the former Government were standing together in as full force as you desire, and as it was when the Scots first delivered the King up to the Parliament of England? I would then know of you *whether if our Parliament had then for reasons best known to themselves* (and of which *we can never judge competently*) *declared us of the* people, *free from any further obligation* of the Covenant, *might we justly have* thought our solemne League at an end, *and that we ought to act* nothing publikely *any longer* by it?

If you will say we should have been still obliged to act upon it, then I aske you again *under whom*? For I have proved it must be alwayes under a Magistrate, and you have all along proved that it must onely be under our lawfull Ma-

giſtrate, how lawfull ſoever the thing be in it ſelfe which is commanded, you would not allow the King to be the perſon to be obeyed, whom you thought fit to keep in an impriſonment. The Parliament (according to our ſuppoſition) would not beany longer obliged to it, or be obeyed in it; and the Scots acknowledge themſelves in the 4. Article to be the ſupremejudicatory onely of Scotland, and I cannot act publikelyby a private Capacity or Magiſtracy. *Ergo* in ſuch a caſe, the Covenant how good ſoever, had not obliged any longer, nor is it in it ſelfe eternall.

Obj: *You will not deny perhaps but one man may free another from an Oath when it is for the worldly profit of him who pleaſes to release it, as every man may throw away any thing of his own right; but you will not allow it in* Sacred things where God is a party.

Anſ. I anſwer, that though no Parent can diſpence his wife or childe from the feare of God and the duties they owe to him, yet he allowed him to breake the childs vow for giving him a ſacrifice, and both to be giltleſſe; and then why may not we be now abſolved, if our publike Parent judges it not fit that we ſhould be any longer tide formally to a conditionall Oath; though it have relation to ſome ſacred things?

Num. 30. How a ſuperiour may free an inferiour from an Oath even in that which belongs to God.

You will ſay no, *becauſe the Parent did not as a party ſolemnly concurre to the Childs vow, and having never conſented he might the better diſſent; but our publike Parent did concurre as a party to our* Oath. *The Parliament and people tooke the Covenant joyntly together, and it is ſaid that if the Father heare the vowes and contradicts them not in the ſame day, then he confirms them, and cannot break them without iniquity.*

To this reply, Firſt, that v. 16. it is ſaid the Childe is free after the diſſent of the Parent, and that the Parent is charged with whatſoever was amiſſe in either, which is excuſe enough for us of the people. Secondly, the difference is great in a maine point of the paralell; becauſe after the concurrence of the Father to the childs vow for ſacrificing ſomething to God, that might be compleated in the Temple without his further helping it on; but we cannot doe any thing in our caſe without the co-operation of our publike Parent all along, neither can he doe any thing with-

without the concurrence of many other possible, but uncertaine conditions, and if he in effect finde those conditions have come contrary to *his publike endeavours*, what may we doe? will it be enough for us to rest in having attempted the *utmost of our private endeavours with him*? or will you authorize every man upon private judgement or interpretation to begin a warre in his own sence.

the difference betwixt this our League & those of Princes for authorizing war.

A League or Pact authorized betwixt private Neighbours over a whole Nation or over part of it, is it not as a League betwixt Prince and Prince: because these have conditions expresst how and when to begin warre upon one another in case their Leagues be broken. But there is no such thing expresst *in terminis* in that Covenant which we have made one with another, and which we made subordinately to our Magistrate: so that if we or the Magistrate faile, we are equally left to Gods justice solely, and to the forfeiture of our own penalties due to him, and every one is to answer for his owne deficiency in his own Station: And being left to our selves againe, we are left to act onely so much of our Oath or of the ancient end of it, as we were bound to before we swore: which is a great deale; because we were bound by *precept* before we were by *promise* all the dayes of our lives, to doe our utmost for the glory of God, and the good of our neighbour.

The obligation of the Covenant, how lesse then the obligation of a Law.

Secondly, Princes or States who by the supremacy of their powers, are able to make Lawes for their separated Kingdomes; when they unite their supreme Powers, they are able to make a common Law for all their Kingdomes together, which is called a League or Compact; But a law when it comes to be broken (which is a publike thing, and therefore of every mans intereſt) may be vindicated publikely by warre, and by those who have a *posse Regni*. But I cannot say the same may be done for the Covenant, for *quo jure* can it be done?

The Scots indeed by one way of arguing make it greater then a Law, and by another make it lesse; which is when they one while affirme it unalterable and unreformable as a divine text, and another while confesse it was not made by

the joynt concurrence of all those who with them are essentiall to the making a publique Law. I conceive we may safely say it is of a Constitution inferiour to that of a Law, and therefore its obligation is lesse, though its penalty be greater to the failers in it. It was made use of onely as a *couvenient instrument or meane*, for the better attaining some lawes as its end. A Law it was not, because it was not made by all the then Legislative powers of the Kingdome. For the Kings concurrence in *England*, if not in *Scotland*, was then held requisite for passing a Law and he ever dissented from his Covenant. Halfe the inferiour sort of the People have not any interest in it, nor have taken it: And not having any obligation to it, how I pray you can they justly be drawn into the Penalty due to it? as they must all be, if a Warre (which is effectually a Penall thing) be begun though by a part of the Nation; for the nature of Warre is such that it puts a whole Kingdome into imminent danger of desolation, though but begun in a part, & by a party of it.

War how an unjust penalty for the meere breach of Covenant.

Thus farre I have endeavoured to shew the true fast and loose of all promissory Oaths, and how their obligations cease according to the nature of the things which they are affixed to.

Ob. *The Author of the grand case of Conscience* p. 1. Objects, *That if inconvenience may breake a promise or disengage an Oath, then many may be cheated, and* David *was much mistaken*, Psal. 15. 4. *Who saith he shall dwell in Gods Tabernacle, who sweareth to his own hindrance and changeth not.*

Ans. I answer, *David* speaks here of an Oath violated by a change onely in the Promiser, who by his Oath hath past a right to another: and therefore can no longer dispose of it, againe, the Party to whom he swore may dispose of it as he pleaseth, and may dispense him from it; because no man hath a right to make another man keepe his own, longer then he please himself. It is a duty to pay a debt, but not to receive it. Finally, this is nothing to those cases where the change is not in us, but in other persons, and in things which relate principally and conjoyntly, to the fulfilling of the Oath or Promise. For if I promise *Titus* a sword

Of the Obligation of such a promise as may be fulfilled solely by the promiser.

ſword at ſuch a time, and he then chance to be mad, (an accident not expreſt betwixt us at firſt) am I bound to put it into his hands in this change, becauſe I was the firſt promiſer?

Ob

Whereas it is ſaid, that the obligation of ſome things end, becauſe they can be no longer kept, *as that of the Kings perſon, &c.* He anſwers, p. 11. *That if men ſhall by violence put an end to the thing, that thereby the obligation may end too, that is a breach of Covenant. A woman promiſeth to be faithfull to her husband, ſo long as he lives; but if ſhe to marry another, kils him, ſhe breaks her promiſe:*

Anſ.

I grant it eaſily, that they who uſe violence to break lawfull contracts, ſin grievouſly; which is a thing now confeſt in every Church of *Scotland*; but what is that to thoſe who uſe no violence to breake them at all; nor can help it when it is done, although many be undone by it? One thing I moſt earneſtly deſire to learne in this queſtion propounded (I gueſſe) concerning the Kings death; which was a conſequence of the others breach and tamperings. *If by the Covenant we were indiſpenſably obliged to preſerve his perſon, how comes it to paſſe, that we were obliged by the ſame Covenant to wage warre againſt him?* I have heard of a *diſtinction betwixt his power and his perſon, but never of any betwixt his perſon and himſelf.* So that if the Covenant could have diſpenced any Souldier of *England* or *Scotland* to kill his perſon by an accident of warre (as his life was oft in danger before he came to the Scaffold) his death had been violent, and the obligation to preſerve him had ended; and yet according to this argument the Covenant had not been broken. Why then ſhould theſe men thinke the world ſo dull, as not to underſtand plainly enough, that the Covenant provided for his death more wayes then one? True it is, that the Covenant held out a faint and a conditionall preſervation of him, and after all no man can ſincerely ſtretch it further: From whence if we will let him judge this one controverſie, he hath left it recorded to poſterity, *in his ſuppos'd book, chap. 9.* In vaine *is my perſon excepted by a parentheſis of word, when ſo many hands are armed againſt me with ſwords:* Moreover in his

Of the obligation for preſerving the Kings perſon by covenant.

his Chapter of the Covenant, *he feared it provided for him in a Logick* too loose *and circumstantiall*. From all which what did he conclude, but that he would not allow of a Covenant-argument for his life?

I know the answer here is obvious, that bullets were not shot directly against him (as few are against any in a Town or in a Battell) and that if he should have withdrawn his person, he should have been out of danger; but then I pray you what advantage had he in this by Covenant, more then any common souldier of either side? who when they retire, are equally out of Danger, Nay he had lesse advantage, For by *preserving him*, they meant *keeping him*, after he was rescued from others, and by keeping him they meant *not him primarily*, but something else, to which all consideration of him was to give way. As for others which were to be brought to punishment, they had some of them leave to goe beyond the Seas, others to enjoy liberties at home; and of all the excepted persons, there was never any of them who was here deprived of life, but as our troubles and warres increast, their number (which was strange) lessen'd even to six or seven at last, and most of those out of the Kingdome. I know they have distinctions wherefore so much might be remitted to those, and not to the King, although he had on his behalfe the word *preservation* in the Covenant; but these distinctions are but their strong justifications for that which is the bottome of this argument, if all Covenanters durst speake plainly alike.

How the words of preservation in Covenant, provided more for the Kings suffering, then the words of punishment provided for Delinquents sufferings.

Ob. *He objects*, p. 11. *That if according to Covenant we should preserve the priviledges of Parliament, against a Malignant party that would have taken away but five Members; why not against an Heretical party which took away above two hundred?*

Anſ. I answer, That when the five Members were in danger, there was a Session of neere all the Lords, and of all the Commons to authorize the People to bring others before them to condigne punishment: But where is there now any Session of a supreme power in this Land, before whom we ought to bring the present Parliament? under what

How meant that the excluding members ought to be brought by us before the excluded.

for-

formall supreme Magistracy can we now co-operate or receive publike orders, but from them? who have commanded no such thing against themselves. Lastly, the Covenant makes not us private men Magistrates, neither doth it authorize us to a war directly, as to a penalty.

Certainely he doth not meane that the remaining Members make no House, because there are more now kept out, then are admitted into it. For would not such an Argument clearely determine, that the House of Lords was never a House, since the Major part followed the King, under pretence, that they durst not sit any longer at Westminster? Or else if the sitting of so many Members as are enough for a Legall vote be illegall, after others are forc't away; How shall we justifie that Session with a new Speaker, when the rest were forc't to the Armies protection from the Citizens servants and Aprentices, who forc't them, and indangerd their lives in the House? Or how shall we justifie the House of Commons for sitting, when the five Members durst not appeare? Though force should not be used without a desperate occasion be given (in which case the preservation of the substance, is alwayes above the consideration of a formality as hath been argued by the Parliament ever since their first warres, yet they know few or many sitters in the House, is not a thing of our examination, if they be above forty.

The second Demurrer, p. 6. *Objects that we have sworne by no terme nor to withdraw our selves from this blessed union, but to continue in it all our lives against all opposition.* Ob.

If there were nothing else in the World, yet these words sufficiently prove that we are now absolutely absolved from the Covenant; for first, they relate to a State and time of *Union*, in which we were according to the united strengths of two Nations, two Magistracies, and of the respective Magistracies and People here enabled, yea commanded to make great opposition against those who then were actually united in armes against the Parliament. But now that we are supposed by these Authors to be dis-united as our enemies are, and that the Magistracy is changed, our state of

Ans. The covenant relates only to a time of union, with and under the Magistrate.

How the League of rationall union came to be ended.

subordination somewhat varied; that the Links of our former chaine are broken; and that the Commons act alone without a King, as Lords and Commons acted before without one; and that the Scottish Nation by their invasion, and their attempting to divide the King from us, and us one from another, by their declaration made preparatorily for division, thereby to favour invasion afterward, have in the face of all the World broken whatever was of Nationall union and Pact, yea and all that which was of confidence betwixt our selves at home, and (which was yet more horrid) in incouraging one principall Army in *Ireland* to fall off from the advantages it had against the bloody Rebels, to turne their swords against the Parliament it selfe, only out of a by end of ambition, yea now (that the warre being ended) we are to enter into an *Union of cohabitation* or *incorporation* (as they have done in Scotland it selfe) with those who during their united hostilities occasiond our Nationall Union. Are we I say after all this, in the selfe same Union which they at first hoped might have been continued to them and us for all our lives? That Union suppos'd the Warre which then was, with the rest of the circumstances, and if we wish the same effect or Union now, doe we not thereby wish the same cause or Warre againe amongst us? as we were to oppose armes to armes, so union to union, and certainly that Union of the Parliaments of both Kingdomes was at an end, ever since the Scotch Army here received their money, and returned home, leaving the Delinquents of both Nations dis-united and clearely reduced to receive condigne punishment, (as the Covenant calls it) at the respective judicatories of both Kingdomes; and if it ended not then, yet it could not be consistent with their Declaration and divisions presently after; and if not then, yet I am sure it could not be consistent with their Nationall invasion and tampering to divide all in England and Ireland, the effect whereof hath been a change of Government here, and hath made them totally distinct forrainers to us.

The Demurrers premisses in this Argument by a new logick,

gick, relate onely to a State of publike Union, and his conclusion relates onely *to a State of publike diſ-union*, of the conſequences whereof the Covenant ſaith nothing at all in any Article; It enjoynes the bringing of Delinquents to condigne puniſhment, and thoſe *private* perſons likewiſe among our ſelves, who ſhould help on, either diviſions amongſt us, or the invaſion of either Nation firſt. But whether ſhould they be brought to puniſhment? The Covenant anſwers, either before the reſpective judicatories of each Kingdome (who onely have power to judge of what is *Condigne*) or before no body.

Of bringing thoſe who would divide us to condign puniſhment.

It ſpeakes likewiſe how we ſhould unitedly venture our lives againſt the Enemy which then was: it doth not, or at leaſt ought not to ſwear us to get the beter of them for ever nor that we ſhould in a rout or diſ-union end our lives againſt all oppoſition, and without quarter. If the termes of *our utmoſt endeavours*, and *all the dayes of our lives*, are to be underſtood literally, and that we muſt not ſurvive any violation of the Covenant, then why doe theſe Gentlemen, (who conclude themſelves in the ſtate of the Covenant thus underſtood) think of living till to morrow? The termes of *for ever, or for all the dayes of our lives* are not in our contracts to be underſtood naturally, but morally; For we finde it plainly in the judiciall Law, that after a Jew had taken a ſervant, and bor'd a hole through his eare, *he was (as the Text ſaith) to ſerve him for ever*, although one of them poſſibly have dyed the next day, and both of them after a while might have been made captives to others. The Law calls the league of Marriage *individua vitæ conſuetudo, a cohabitation for all the dayes of our lives.* For ſo it ſhould be *ex voto contrahentium, in the ſincere deſires of the contractors*; Yet we know, one ordinarily dyes before the other, and that many conditions may happen to legitimate their divorce afterwards, though the contract was never ſo religiouſly made in the preſence of Almighty God at firſt.

The meaning of our *utmoſt endeavours* and of *all the dayes of our lives* in the covenant.

The Scots in *their late proceedings with their King at the* Hague, *pag.* the 6. interpret the words of *utmoſt endeavour*, as morally as we doe here. For the Commiſſioners of the

Kirk said. *they usd their utmost endeavours to save the Kings life according to Covenant*; *but how? They answer, that it was in Papers, Messages, Declarations, Testimonies, and Protestations onely*; they name not warre, or bloodshed, for they protested against that way last yeare, as contrary to Covenant, when the Parliament of Scotland invaded us; and I hope for the reputation of the religion they professe, they have not altered their publike commentary of that sacred Text contradictorily so soone.

To conclude, *Either we are still in the Union of the end of the Covenant, or we are not*: If we be in it, then these breake the Covenant, by seeking to dis-unite us: If we be not in it when then is the Article for our private forming a warre upon it? and under whom, if not under our English supreme judicatory? and if they call us not out to revenge that which was more then a bare falling off from the Covenant last yeare amongst our selves, (when the Scots exercis'd such high hostilities, and were the first shatterers of all our frame (which otherwise might by Gods blessing have cemented againe) how durst these private trumpets sound the alarum, and open the wounds of the Nations once more? Though the respective judicatory of that Kingdome now cannot make that which was once done, undone; Yet by the present punishment of the Kirk, it is acknowledged that they hold the Covenant to have been more then nationally broken, in regard of the harme and damage which was done to us after it was broken. For there is a great deale of difference betwixt ceasing to helpe according to a league, and acting hostily contrary to it, especially when no such penalty is in such a league expresst betwixt the parties.

The Covenant how more then broke by the Scots hostility

Obj: *But you will object, that if the Covenant were so broken in one or two points by them, yet it doth not follow, that the whole Covenant is broken thereby, and dead in every part.*

Ans. I have answered before that we are no longer obliged to any thing in it by the way of League and Covenant; The reason here is, because in Leagues every thing is to be observed conjunctively, otherwise all is broken; which is so true and

Whither the nationall breaking of one part of the Covenant

and cleare, that if we looke upon Gods League and Covenant with Israel, we shall finde the same thing pronounc't there. God said, If yee keep my Commandements, I will be your God, and will maintain you in your plenty, and in your Land: Yet he said, that *if they broke any one commandement in their part of Covenant, they were guilty of all*, and that all should be at an end betwixt them: just as St. *John* in the conclusion of his Revelation, saith, *Who ever shall diminish but one word of that* Book *defaceth the whole, and looseth the whole benefit which he might expect thereby in the holy City, by vertue of the second Covenant.* put an end to the whole.

It is asserted, that there is no clause in any Oath or Covenant which in a common sence forbids obedience to a present Government: To this the Grand case of Conscience answers, *That the Covenant engages to another Government, therefore it forbids obedience to this, and Oathes ought to be their own interpreters.* Ob.

Here he at first begs the question, whether the Covenant can now engage us or no? seeing it hath been proved, that that which is now nothing, cannot now engage us to any thing; and consequently our submitting to, and acting under the present Government, cannot be contrary to Covenant; because things which are contrary one to the other, must have actuall being together at the same time. But the very being of this Government, supposes the nullity of the Covenant, whose death (as it was other where contrived before) gave life to that mutation here afterwards. Ans.

Secondly, though the Covenant were still valid and in force, yet when we were sworne to it first, it found us actually out of that Government here pointed at, *viz.* Of King, Lords, and Commons. For that is the supreme Government of a Country, which makes a supreme law there: But at that time the supremest humane law, which (according to these Gentlemens opinions (was ever made in England or Scotland, or perhaps in all the world, was made without the King in those Kingdoms, and against his consent. For which reason the Covenant engages not so positively for King or Kingly Government, as for the Union. The Covenant (of all oaths) interprets it selfe least, especially in the positive Government, which it would establish, and in Religion.

Though the Covenant were in force, yet a change of Government might be consistent with it.

on of the Covenanters in any forme and against any opposition; Whereupon the Presbyterians when it was (as most conceiv'd) in their power, to re-stablish King or Kingly Government, they omitted both for many dayes of their lives; without question, because they conceiv'd it not a Government absolutely necessary by Covenant. When *D. Hamilton* entred England so hostilely for that end, and as he thought, by vertue of Covenant, yet he was excommunicated for it by the Oracles of the Covenant.

Lastly the reigne of the Covenant, since the first day of its birth and obligation, was never yet a Regall reigne, no not for one day any where; so that the change which is, is not determinately contrary to that principle, out of which (according to the circumstances of security) any Government may be moulded for any place. For which reason If I should grant you that the Covenant were not expir'd, and had not been so palpably broken, as it was betwixt the Nations; yet Scotland (if they had pleas'd) might have been govern'd by a King, and England by a free State, and yet both consonantly enough to Covenant and without any contrariety, because the circumstances of security in one might have been different from the circumstances of security in the other; which though different, might as well have been mutually maintained as their discipline differing from ours might have been preserv'd by us. From all which it appears, that that Oath is Cloudy in the positive or set Government which we ought to have, and so cannot be justly called its *owne interpreter*; besides a Reformation according to the Word of God, and the example of the best reformed Churches, supposes such a latitude of Logick as would (if all sides should be heard) give us as much exercise as all our warres have.

How the Covenant necessarily points at some change of Government.

And certainely the Covenant is alike undefin'd in Religion and in civill Government. For we swore to bring the Church Dicipline in the three Kingdoms, to as neer a similitude as the constitution of the places would bear, *not into the very same*; and as for the civill Government, it was to receive its *forme* in the security of that, just as water doth receive not onely the figure of the Pot or Glasse into which it is put, but its conservation from being totally lost and spilt.

ſpilt. But how then will you free your ſelfe from this contradiction, in aſſerting that the civill State is unalterable by Covenant, when that of the Church, which formes the other, is ſo much alterable; and ſeeing that of the State receives from this, not onely its form and being, but whatever elſe you pleaſe to attribute to your ſecurity in it? From whence I conclude againe, that a change of Government is conſiſtent with Covenant, and that a ſubmiſſion to it in lawfull things is much more, and conſequently it ingages not to any one determinate Government, and ſo is not againſt this of ours.

I beleeve it hath been a frequent obſervation of many, who have calmely converſt with our Divines, and others zealous for Presbytery, That they have found them little ſatisfied with that ſort of Presbytery, which our Parliament modelled for us of this Nation; as having little affinity with the Covenant. My beliefe is, that they in that diſcern'd not the conſequence of their own diſ-ſatisfaction. For if their conſciences regulated by Covenant, can admit no civill Government, but the Kingly (which they ſo much argue for here) and if the Covenant and a Scotch Presbytery (whoſe right they hold to be Divine) be eſſentially linkt together, then we and they may all of us learne, not onely from direct inferences, but from the declar'd experience of the Sonne, the Father, the Grandfather, and great Grand-mother, that is, of the three laſt Scotch Kings and one Queene. That if the Scotch Presbytery come out of the Covenant, then Kingly government cannot derive from it, becauſe they are juriſdictions incompatible and inconſiſtent in the ſame place, and if one can conſerve it, then may we ſay as much of the other. How much *Mary* Queen of Scotland experienced of this, let the World judge by that which ſhe wrote both with Inke in her Letters, and with her blood on the Scaffold. For how came ſhe to be beheaded in England, but by *Mr. Knox* (and the Kirks having done little better than) putting her into the hands of thoſe who could not keepe her long alive with ſecurity to themſelves? King *James* hath writ and argued largely concerning his dan-

Scotch Presbytery fit for any Government but the kingly.

The judgement and experience of Mary Queen of Scotland.

Of King James.

dangers and sufferings under it, and it is yet remembred in what Dialect they of the Presbytery were wont to preach and pray against him to his face, and he not know how to remedy it, or by what right to top theirs. When he came into England he profest his deliverance from that subjection not of small satisfaction to his minde, and therefore at this distance he contrived how to extinguish or check that mate there, and after some progresse in that work he himselfe dyed peaceably in a milder Country; But King *Charles* with that Crown inherited the consequences of that undertaking, for his first troubles began in the controversie of that Presbytery; and what a preservation he thought the Covenant (from which it seemes their Presbytery is so inseparable) might be to him and what his fate was and who helpt it on, nay who diverted him from agreement here, all the world knowes and in his writings likewise he hath shown to the World that he himselfe was not ignorant of it; This onely is the wonder, that in the midst of this their specious zeale for Kingly Government, the Covenant should be so silent concerning Royall Posterity, or for their succession, in case the Scots or English Souldiers had kill'd the King casually before he had given them the satisfaction which they required; The consideration of all this, with some other lately offer'd to the young Prince at the *Hague*, by the Scotch Commissioners, and the satisfaction which they in their late Declaration require from him, as they did from his Father, have questionlesse made him scruple so long at his adventure into that Country, though so much invited. For they told him p. 14. 15. *That for longer then these eight yeares, yea ever since that Queene Mary, their fundamentall privilege hath been to assemble in Parliament; and to conclude there of themselves, either without King or Kings Commissioners; and that if his Majestie refuse those their reasonable desires, they shall be constrained in so great an extremity, to doe what is incumbent on them, to preserve Religion, and the Kingdome from ruine.* Here they plainly acknowledge, and assume that supreme power and right, which shall be proved here more evidently towards the conclusion.

Of King Charles vid. Scotch Declaration, 27 July 1649. p. 14.

Of the Prince

vid. Decla. p. 8. 10.

Scotch proceed, at the *Hague* with the Prince, p. 14. 15.

But

But because I intend truth here in the simplicity of my heart, and no way to swell this Argument, either with passion in my selfe, or with scandall to any man else, therefore I shall sincerely unfold what hath long been a mistery to my selfe, and for confirmation of what I have asserted here so positively, I shall give the Reader the expresse words of our great English Covenant-Champion, and of Master *Henderson* especially, the Scotch Champion, betwixt whose fingers the Covenant it selfe was moulded.

Our Grand case of Conscience, p. 14. *saith*, *But they who are now for the right of the Sonne, and continuance of the Government, are as much against the vices in and about him, as about the Father. And should he doe as his Father hath done, they who are now for the performance of this Oath and Covenant, would as truly joyne against him as against the Father.*

Who can call this Regall Language? which yet will be lookt on as the English Presbyterian-alarum, though but by one man. He had done well in speaking of the performance of Covenant by us all: if he had offered a Catalogue of all that which would fulfill the Covenant in all its termes without any further interpretation: But that which is supposed eternall for time, is likewise infinite as to the matter which it may relate to by the application of humane Logick.

Mr. Henderson *in his* Newcastle *conference, with the King* p. 24.25. *saith*, *That the reforming power is in Kings and Princes*, Quibus deficientibus, *it comes to the inferiour Magistrates*, Quibus deficientibus, *it descends to the grosse of the people, but yet supposing still (as he saith) that they be all of them rightly informed.* For which reason though he conceal'd it from the King, yet he meant, that the reformation of any of those three powers, according to the Covenant must be judged and reformed afterwards by some other body of men here not named. For I conceive that he who is ultimately to judge of the Reformation, and of its publike obligation, judgeth likewise of the reformers themselves

The supreme power in Scotland in whom.

though never so high or never so low; and to this strange opinion he would faine intitle two English Episcopall Champions *Bilson* and *Jewell*.

Here I must confesse I was at a stand, concerning the nature and interest of the Covenant, and was sorry to see that I was no plainlyer told whether it would carry me (laden with so great a curse) nor where it would set me down. At last I found in the same Author p. 32,33. Speaking of the subordination of powers, under which people were finally to obey, That he would not willingly tell his Majestie, whether the Church was subordinate to the civill power, either to King or to Parliament, or to both: For (quoth he) *I utterly disclaime such a headship as the Kings of* England *have claimed, or such a supremacy as the Houses of Parliament crave, with appeales from Ecclesiasticall Judicature to themselves.*

How the Scots state the supremacy of England in Scotland.

No man may think but Mr. *Henderson* meant this for the jurisdiction of England, as well as of Scotland, for he spake of Houses of Parliament which were plurall, in England onely; And though it may seeme strange at the first view, to here one say, that the Scotch Nation state the supremacy of England in their Country, or that they endeavour a direct change of Government here, (which they have indirectly attempted for a long while) let every man judge, not by our subtilties, but by the Kirks Declaration, 27. July, 1649. p. 11. 12. Their words are, *That their King after his Oath of Coronation in* Scotland, *shall assure them under his hand and seale, to injoyne the solemne League and Covenant, establish and practise the Presbyteriall Government, Directory, Confession and Catechisme, as they are approved by the severall Assemblies of their Kirk and Parliament in ALL HIS DOMINIONS, and that he shall never endeavour any change thereof.*

How the Scotch Presbyterians and ours oppose one another.

No man will say but States like Judges ought to act *ex bono & æquo* conjunctively. So that though these things which here they would impose upon us perpetually, were never so good, yet they being unequitably driv'd upon us from

from their ſupreme judicatory (in whoſe poſſeſſion we are not ſo fully now, as they were laſt yeare in ours) we ought to abominate their deſigne, as much as they might the like obtruſion of their Presbytery from hence, without power there to rectifie it ever after. For theſe Presbyterians with us grant, That good and lawfull things may not be practiz'd under a power unlawfull, as they ſay the Scots would be here.

However here I at laſt found who was my ſupreme right Magiſtrate in the Kirks ſence, but then I conceiv'd I was in a great ſnare, becauſe I *ſaw the* jus publicum *of a Kingdome totally though ſecretly changed*, I ſaw all things of direct religion, and whatſoever related collaterally to its ſecurity, lodged there, and by the Kirke pre-judged from the judgement of all other authorities, in Scotland eſpecially. But becauſe religion and its ſecurity draws in all humane concernments, and that two ſupreme collaterall powers cannot ſtand in one and the ſame place, in the ſame time, for the ſame perſon, but for contrary actions, therefore I knew not whether of the two ſupreme powers, the Eccleſiaſticall or the Civill, I ſhould in this caſe throw away, for they could not in this conteſt by the judgement of any be both obeyed together; and I ſtood in a miſerable caſe betwixt a Jaylor and a Devill, the Kirke giving me to the Devill if I obeyed the Civill power, and the Civill power giving me to the Jaylor if I obey'd the Kirke, which was (to ſpeake the truth) the State of the whole Kingdome of Scotland laſt yeare, betwixt the Kirks excommunication, and the Parliaments Order which authoriz'd Duke *Hamiltons* expedition, in Vindication of the Covenant here: In which difference we have no reaſon but to like the effect however we may diſlike ſuch a cauſe here.

Two ſupremacies in the ſame place, how inconſiſtent.

Wherefore to anſwer this ſcruple, I poſitively ſay, That in whatſoever is of Pact betwixt man and man, or of policy in the Covenant, I ought ſolely to follow the Civill Magiſtrate, and the Church here ought to follow the Magiſtrate likewiſe, as a caſe relating to the diſquiets, to the

warres, and to the recovering the peace of earthly Kingdomes: If otherwise, then the civill jurisdiction ought clearely to be managed by the Ecclesiastique; which is stated so no where (that I know of) but in *Romagne*, and *Dutchy* of *Ferrara*, and the other places belonging to the Pope. This I speake not as desirous to detract any thing from the sacred function of the Ministery, as it containes it selfe in its own function, no man being able rationally to object any thing wherefore some might not *ex officio*, be deputed to excite others to vertue and sanctity of life. But yet who can say they are not subject to the infirmities of ambition, avarice, and severe passions, as well as other men? or have not our Antagonists (whether they would or no) observ'd them in these cases of worldly rights and interests, to have as oppositely, yet as peremptorily differ'd one from another, as people of any faculty ever did? The Devill not being able to get the Text on his side, by his wiles oft got the commentary; so that we are to be excus'd, if we hold many things in Church-men, to be but as an Apochrypha at best, which yet for esteeme sake is allotted a place before any thing else, next after the genuine Text.

Having thus openly stated the scruples of my own and of many more consciences, and to take off maskes, not from the faces, but from the consciences of these three, and the multitude of other Scotch Casuists, who have talkt so speciously for our Covenant, Vindication of an Heirs just Title, our submitting to it, and joyning with others immediately, least right suffer wrong one day; I cannot (I say) but aske the same men plainely, *What difference in effect they finde, betwixt the Titles and right of the Prince of* Wales, *and of the new King of Scotland, notwithstanding all their obligation of Covenant, to submit to him as such?*

Whether a true Title doth (according to Covenant) authorize obedience.

It is not enough by Covenant to preserve an aery Title onely to a Prince, and by the same Covenant, to suspend all the est of his solid power, and right? certainly his Royall

all commands (notwithstanding all this talke) are no more obey'd in *Scotland* now, then the Episcopall commands of our Countryman, the Bishop of *Chalcedon* are now obey'd in *Turkey*.

But what hinders him from exercising any Kingly right in *Scotland* as yet? The Covenant which is not yet satisfied. How is it then, that some of our Presbyterians say, that the same Covenant indispensably opens the doore to him here? If the King aske the Scots why they put the Law of the Covenant so to his obedience, as the first thing which determines all his other Rights afterwards? They can onely say, that they swore it in his Fathers reigne, and it is now eternall. Though I censure nothing here, yet I cannot but conclude hence; That they of themselves, as well as our Parliament, have made a Law above all other Lawes, (and more then a reformable *Magna Charta*) for the Government of the Kingdome, which may be exercised according to it, without Kings, and against Kings.

The King of Scotlands present case, and the actuall change of Government there by their interpretation of the Covenant.

The first thing which was ever offer'd to him from the Kingdome of *Scotland*, was an authority by far transcending his owne, *viz.* that of excommunication. For (as their late proceedings with him at the *Hague* shew) he was by that subtilty tryed whether he would refuse first to acknowledge *James Graham* (*alias Montrosse*) or that great power of the Church, by which he might be awed to greater things afterwards. To backe this likewise the Commissioners of the Synod said (*p.* 22) that they negotiated with him in a capacity altogether distinct from the Commissioners of Parliament, as being persons commissioned by the Kirk, which is commissioned with a *Jus divinum*. Our Bishops certainly never undertooke such a jurisdiction and supremacy, and unlesse these had witnessed so much of themselves to all the world, no one would believe, that in such a poore Countrey, and so much forme of Religion, there could be such high passions of ambition.

Page 18.

Page 22.

Besides,

Besides if it be a true rule, That he who is the maker, ought to be the interpreter of a Law, then let all the world observe one thing, That the Kirk having made the Covenant (as the principle of all supreame rights both of State and Religion) then they alone ought to give the interpretation of it from time to time; as they *de facto* did not onely last yeare, contrary to the interpretation of their owne Parliament, but also for many yeares together have peremptorily prest it upon ours: So that it makes a fundamentall change of Government there, though differently from what our Parliament hath made here the *jus publicum* both of Religion, and security of State with them, lying in the Covenant, and that lying in the brests of Church-men, chosen by one another: and ours lying in the power of Lay-men, chosen by the People, and judging by the Common Lawes of equity and necessity, and of the word of God.

The interpretation of the Kirke is not recommendatory to the State.

It were in vaine to say *the Kirke onely recommends their interpretation to the State.* For last yeare they did it with a *Penalty* upon the Parliament, their whole Army, and the body of the people which obey'd them; if it be a penalty to be given to the Devill, and to be put into a State of Eternall death. Wherefore they there are, (or else none are any where) the true judges of right, who make themselves judges of wrong and of punishment.

The conclusion.

To conclude, how practicable soever the Covenant was at first, or how erroneously soever we may now conceive it to be extinct, or to be a principle fitted to justifie a change of Kingly Government, which was actually made first of all by it and their Presbytery in Scotland; yet it being originally but a Politicall or conditionall Oath, relating to our former Unions when warre was, and to our co-operation under our respective Magistrates onely, not in a way contrary to the fifth Commandement; and that all the Magistracy which we enjoy, and by whom we are now fully possest, if they have not laid it aside, yet call us not out to act the remaining part of it; and that it interprets not it selfe, so that each private man is not made by it his own Magistrate; and

that

that there is no penall Article in it, obliging us private men to pursue a publike revenge upon the Magistrates; or any other men: have neglect or mis-interpreting it to themselves; who therefore can contrary to all this, peremptorily warrant us now, yea necessitate us to begin, or assist to the desolation of warre and bloudshed upon it? especially seeing it is made very dubious at least whether we be now tyed to it at all or no. Furthermore how good soever it was at first, yea though that other Nation had not given it it's mortall wound, when they attempted to give us ours, both in England and in Ireland, which was the cause of this effect of change of Government here) yet if when it was in force, it should any other way have received a bad tincture of passion or ambitious policy among our selves, why might it not by our Magistrates order, have been as well carried out of our Churches as the brazen Serpent was out of the Temple, *after it was unhappily perverted to its wrong end? If otherwise, and that it must at all hazards be indirectly made a snare to peaceable consciences, even after it is extinct (as hath been proved) I shall desire any pious spirit to judge, whether it doth not in such a case deserve much of* Campanellas *censure which he gave upon the Spaniards India Treasury, That it was gotten in blood, sailes home in a sea of blood, and never rests till it be all laid out in blood.*

The Reader may be pleased to take notice, that though these replyes for the most part touch but on simple obedience to a Government supposed unlawfull, but commanding lawfull things, yet they vertually extend to our acting under such a Government. It is to be presumed that our adversaries, not contesting professly what hath been publikely argued in that point, doe conceive the difficulties of acting under, involved in those of our submission to such a power; The distinction of *Active* and *Passive obedience*, is but a nicety, and if one be not a sinne, the other is not. They are in a manner the same thing, derive from the same Principle, and differ but gradually, just as the morning and the noon light do; which derive both from the same Planet. For he who takes paines to furnish

in,

in a Taxe, and he who takes paines to execute the office of a Judge or of a Justice of Peace in honest things, by vertue of Commissions and Orders from the same supreme (but illegall) Magistracy, doe both of them what they doe, by vertue of the same originall submission, which is a passive obedience. If this be otherwise, then (according to these authors opinion) we and all our forefathers have sinned, and obeying those actually, or passively, who by unjust usurpation have come betwixt us and those, who derive from the first who were in compact, unlesse the lapse of time can justifie the viciousnesse of an action (which is impossible) or that we may lawfully obey those who plenarily possesse and protect us, and command us lawfull things.

FINIS.